THE

BENGAL TENANCY ACT

BEING

ACT VIII OF 1885

WITH

NOTES AND ANNOTATIONS, JUDICIAL RULINGS,

AND THE

RULES MADE BY THE LOCAL GOVERNMENT AND THE HIGH COURT, UNDER THE ACT, FOR THE GUIDANCE OF REVENUE OFFICERS AND THE CIVIL COURTS.

BY

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The following portions of the Bengal Tenancy Act VIII of 1885 have been extended to Orissa.

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I ...	3	Government Notification, dated 19th September 1891.
II ...	4—5	Ditto ditto.
V ...	19—26	Ditto ditto.
	27—38	Government Notification No. 2448L R., dated 27th June 1892.
VI ...	41—47	Government Notification, dated 10th September 1891.
VII ...	48—49	Ditto ditto.
VIII ...	53—75	Ditto ditto.
IX ...	80	Government Notification No. 2448L.R., dated 27th June 1892.
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XVII ...	189—190	Government Notification No. 115L.R., dated 5th January 1893.
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INTRODUCTION.

In the following pages we propose merely to give a brief summary of the circumstances which have led to the passing of Act V of 1885, and of the principal changes made by it in the Rent Law of Bengal.

The question of a revised Rent Law for Bengal has been under consideration for a very considerable time past. The provisions of Act X of 1859, which, up to the passing of the Act, either in their original form, or as re-enacted in Act VIII (B.C.) of 1869, governed the relations of landlord and tenant in Bengal, were soon found to be defective. The principal faults of Act X of 1859 have been said to be that it placed the right of occupancy, which it recognized in the tenant, and the right of enhancement, which it recognized in the landlord, on a precarious footing. It gave, or professed to give, the raiyat a right which he could not prove, and the landlord one which he could not enforce. It also, according to the landlords, made the recovery of their just dues a difficult, protracted, and sometimes an impossible task.

As early as 1863, an amendment was suggested by Sir Barnes Peacock, the Chief Justice of Bengal, and by the Revenue Authorities of the North-Western Provinces. In 1873, disturbances broke out in the Pubna district, in Eastern Bengal, owing to the raiyats leaguing together to resist illegal exactions on the part of the zemindars,—short measurements, illegal cesses, and forced delivery of agreements to pay enhanced rents being the main grievances they complained of. The Lieutenant-Governor of Bengal, Sir George Campbell, then expressed an opinion that Government would be eventually compelled to deal with the whole question of the relations of landlord and tenant in Bengal.

Subsequently, in 1876, Sir R. Temple proposed to introduce a bill to define the principles on which the rights of occupancy-

raiyats and tenure-holders should be fixed, to simplify the procedure for realizing arrears of rent in undisputed cases, to extend the definition of occupancy-raiyats, and to render the interest of a raiyat of that class liable to sale for default in paying rent, and transferable by private agreement. But in 1877, before his proposal could be fully considered and given effect to, Sir R. Temple was succeeded, as Lieutenant-Governor of Bengal, by Sir Ashley Eden, who, abandoning his predecessor's project, considered it advisable merely to introduce a bill, providing for the realization of undisputed arrears, and to defer all further amendment of the law for the time being. This, however, was found to be impracticable; and, in February 1879, a majority of the Select Committee on the bill recommended that the revision of the whole of the Rent Law should be undertaken. Accordingly, in 1879, a Commission to prepare a digest of the existing statute and case-law, and to frame the draft of a consolidating bill, was appointed. Meanwhile, a Committee of experienced Behar officials, indigo-planters, and zemindars had been sitting under orders of Government to consider and devise remedies for the abuses prevailing in the relations between landlord and tenant in Behar. They submitted their report in March 1879, and proposed, as they did not consider that the requirements of the case could be properly met by a mere amendment of the then existing law, that the whole of the Rent Law should be re-cast. The report of the Behar Committee was referred to the Rent Law Commission, who, on the 19th June 1880, submitted their Report with a draft Landlord and Tenant Bill, which purported not only to amend, but to consolidate, the whole Rent Law of Bengal. The bill was, however, not accepted in its entirety by Government. A second draft was prepared by the Hon'ble Mr. Reynolds, now Member of the Board of Revenue. A third draft was drawn up under the superintendence of Sir Ashley Eden. Subsequently, a bill was drafted by the Government of India. and introduced into Council, on the 2nd March 1883, by the Hon'ble Mr. Ilbert, the Legal Member of the Governor-General's Council. A further bill was afterwards drafted, and the present Act did not finally pass through Council, and receive the assent of the Governor-General, till the 14th March 1885.

Before alluding, as we propose now very briefly to do, to the principal changes made by this Act in the Rent Law of Bengal, we must explain that the project of codifying the Rent Law and consolidating the statute and case-law on the subject was abandoned by the framers of this Act. The task undertaken by the Rent Law Commission had to be given up owing to its difficulty and the opposition it excited.

The present Act, therefore, while materially altering the previously prevailing law, does not profess to, and does not do, more than merely consolidate existing enactments, and to a limited extent embody the case-law on several disputed and hitherto undecided points. It is not, therefore, a complete digest of the law of landlord and tenant in Bengal. The task of compiling such a digest, in short, of codifying the Rent Law of Bengal, remains still to be accomplished.

Turning to the changes made by this Act in the existing law, we would again explain that we do not pretend to give here a detailed or exhaustive account of them. We have explained these changes more fully under the sections, or at the end of the chapters, in which they occur. We here briefly summarize them, merely to facilitate the comprehension of the scope and effect of the present Act.

The principal changes in the law, then, are as follows:—

(1) That a raiyat becomes a "settled raiyat," and acquires rights of occupancy in all the lands he holds in a village, provided he has held any land for twelve years in the same village. It is not now necessary that he should have held the same particular land, or that he should have held all the land for twelve years, as was the case before. If he has held any land for twelve years in a village, he acquires occupancy-rights in all the land he holds, or may in the future hold, in that village.

(2) In any proceeding between a raiyat and his landlord, it is to be presumed that the raiyat is a "settled raiyat" until the contrary is proved or admitted.

(3) The grounds on which a settled raiyat's rent may be enhanced have been modified, and the enhancement of his rent by suit has certainly been facilitated; but, on the other hand, the enhancement of his rent by contract has been restricted, and

a raiyat cannot now contract himself out of almost any of the rights conferred upon him by this Act.

(4) All notices of enhancement have been abolished by this Act, owing to the difficulty experienced in drawing them up in accordance with the provisions of the former law, as well as of proving their service. The institution of the enhancement-suit is now all the notice of enhancement required to be given to the tenant.

(5) If an occupancy-raiyat's rent has once been enhanced by contract or suit, no suit for the further enhancement of his rent will lie until after the expiry of fifteen years.

(6) An occupancy-raiyat or his landlord is empowered to apply for commutation of rent payable in kind to a money-rent.

(7) A non-occupancy-raiyat can now be ejected at the will of his landlord, only if he has been admitted to the occupation of the land under a registered lease, and after the service on him of a six months' notice to quit, and within six months of the expiration of the term of his lease.

(8) A non-occupancy-raiyat, who objects to pay an enhanced rent, can now have his rent fixed by the Court. If the raiyat refuses to pay the rent so fixed, he can be ejected. But if he agrees to pay it, he is entitled to remain in occupation of the land at that rent for five years.

(9) A landlord is now bound to retain the counterfoil of every receipt he gives to a tenant, which receipt has to contain certain specified particulars, and every tenant is now entitled, at the end of each year, to a receipt in full, or a statement of account up to the close of the year. Further, a receipt which does not contain substantially the particulars required by law will be presumed to be a receipt in full up to date.

(10) Provision has been made for tenants making improvements in their holdings and for their recovering compensation for them in the event of eviction. A system of registering improvements, whether made by the tenant or the landlord, has also now been introduced.

(11) Power has now been given to a landlord, with the sanction of the Collector, to acquire the land of any of his tenant's holdings for building, religious, educational or charitable purposes.

(12) No tenant can now be ejected except in execution of a decree.

(13) Provision has been made for the appointment of common managers in the case of disputes arising between the co-owners of estates.

(14) Act VIII (B. C.) of 1879, the Act under which all settlements of Government and other estates have hitherto been made by Government, is repealed by this Act. Government is consequently placed on the same footing as other proprietors with regard to its tenants, except that it retains the certificate procedure for the speedy recovery of the arrears of rent due to it. Further, as regards the record of the rights and the fixing of the rents of tenants of lands under settlement, such settlements will have ordinarily to be made under the provisions of this Act.

(15) In Chapter X provision is made empowering the Local Government, with the previous sanction of the Governor-General in Council, to order that a survey and record-of-rights be prepared in respect of the lands in any local area by a Revenue-officer, and when any such records-of-rights and settlement of rent is proceeding in any local area, the ordinary Civil Courts are precluded from entertaining any suit for the alteration of the rent, or the determination of the status of any tenant.

(16) Power is given to the Local Government, on its own motion, or on the application of a tenant, to survey and define a proprietor's private or demesne land, in which rights of occupancy cannot be acquired. Restriction has also been placed on the conversion of ordinary *raiyati* land into *khamar* land, so as to prevent a proprietor, in future, from putting obstacles in the way of the acquisition of occupancy-rights by his tenants.

(17) The landlord's power of distraint has been curtailed. A landlord can now only distrain through the Civil Court, and notwithstanding the distraint, the tenant is entitled to reap, gather, and store the produce, and do anything necessary for its preservation.

(18) A landlord can no longer harass his tenant by instituting successive suits for arrears of rent against him. Three months must elapse between each successive rent-suit.

(19) The disabilities of minority and lunacy do not now apply to rent-suits.

As to our efforts in connection with the editing of this Act, we would only say that we have reproduced, under each section, such of the High Court rulings under the old law as would appear to be now applicable. We have added notes calculated, we hope, to elucidate the meaning and facilitate the interpretation of the various sections. We had also hoped to have inserted, in their proper places, the rules drawn up under the Act by the Local Government and the High Court for the guidance of the Revenue-officers and Civil Courts; but they had not been finally settled and published when these pages were ready for the press. To have awaited the final publication of these rules before sending these pages to the press, would have greatly delayed the publication of this work. We have, therefore, printed these rules together in an Appendix, and have referred to them under the several sections to which they relate. We have also embodied in the Appendix, with the permission of the Board of Revenue, the substance of the instructions prescribed by the Board of Revenue for the guidance of Revenue-officers engaged in the cadastral survey and record-of-rights now being made in Pargana Gudesswar and Tuppehs Chuckla Nye and Butsaleh, of Pargana Bisareh, in the district of Mozufferpore. We have further added notes and rulings on many points connected with the Rent Law of Bengal, on which the Act is silent, but which have appeared to us to be important, and though we do not profess to have succeeded in making this edition of the Bengal Tenancy Act a complete digest of the Law of Landlord and Tenant, we trust that it will be found to be a useful hand-book on the subject. We trust, if the book reaches a second edition, to be able hereafter more fully to accomplish this object.

M. F.
R. F. R.

CALCUTTA,
1st January, 1886.

BENGAL SECRETARIAT LIBRARY

THE

BENGAL TENANCY ACT, 1885,

BEING

ACT VIII OF 1885.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 14th March, 1885)

An Act to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the Administration of the Lieutenant-Governor of Bengal.

WHEREAS it is expedient to amend and consolidate certain enactments relating to the law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal; It is hereby enacted as follows:—

This Act is not, and does not purport to be, a complete Code of the law of Landlord and Tenant. It merely amends and consolidates previous enactments,—its principal objects being (1) to give reasonable security to the tenant in the occupation and enjoyment of his land, and (2) to give reasonable facilities to the landlord for the settlement and recovery of his rent.

CHAPTER I.

PRELIMINARY.

Short title

1. (1) This Act may be called "The Bengal Tenancy Act, 1885."

Commencement.

(2) It shall come into force on such date (hereinafter called the commencement of this Act) as the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, appoint in this behalf.

By a notification, dated September 4th, 1885, published in the *Calcutta Gazette* of September 9th, 1885, the Lieutenant-Governor, with the sanction of the Governor General in Council, declared that this Act should come into force on November 1st, 1885.

Local extent.

(3) It shall extend by its own operation to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal, except the Town of Calcutta, the Division of Orissa, and the Scheduled Districts specified in the third Part of the First Schedule of the Scheduled Districts Act, 1874; and the Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, extend the whole or any portion of this Act to the Division of Orissa or any part thereof.

XIV of 1874.

Orissa.

The Local Government has not yet extended the whole, or any portion, of this Act to the Division of Orissa or any part thereof. In the greater part of the districts of the Division of Orissa, the settlement is a temporary one, and Act X of 1859, and its amending Acts (VI, B. C., of 1862, and IV, B. C., of 1867) are in force. The Scheduled Districts of Bengal, according to the First Schedule of the Scheduled Districts Act, are the districts of Darjeeling and Jalpaigori, the Hill Tracts of Chittagong, the Santál Parganas, the mehals of Angúl and Banki in Orissa, and the districts of the Chutiá Nágpur Division. The rent law prevailing in these districts is as follows: In the Darjeeling district, Act X of 1859 has hitherto been, and for the present continues

Darjeeling and Jalpaigori.

to be, in force. The district of Jalpaigori consists of two tracts of country, namely, of a tract which may be described generally as the tract lying to the south of the river Teesta, which formerly belonged to the Rungpore district; and of a tract which may be described generally as the tract lying to the north of the Teesta, and which was annexed from Bhutan in 1866. In the portion of the district which formerly belonged to the Rungpore district, the settlement is permanent, and Act X of 1859 is now in force, and will, for the present, continue to prevail there. In the tract north of the Teesta, there is a special Act in force, namely, Act XVI of 1869 (The Bhutan Dvars Act). This may be briefly described as no law at all, for it merely excludes "the ordinary Civil Courts from the cognizance of suits relating to immoveable property, revenue and rent," without laying down any law or rules for the guidance of the officers appointed by Government to exercise jurisdiction in this tract of country. The Bhutan Dvars Act will still prevail in this portion of the Jalpaigori district after the passing of this Act. The Hill Tracts of Chittagong have, by Act XXII of 1860, been removed from the jurisdiction of tribunals established under the general Regulations and Acts; but, by letter No. 2461, dated April 17th, 1867, the Local Government has directed that the Courts in the Hill Tracts shall be guided by the general tenor and spirit of the Code of Civil Procedure and such laws as may be applicable. In the Santál Parganas, Reg. III of 1872, made under the thirty-third of Victoria, Cap. 3, and the Bengal Regulations mentioned in its Schedule are in force. The mehál of Banki in Orissa was, but is no longer, a scheduled district. It has been annexed to the district of Katak by Act XXV of 1881. The mehál of Angul in Orissa is still a scheduled district, but Act X of 1859 has not been formally extended to it. In the districts of the Chutiá Nagpúr Division, the provisions of the Chutiá Nagpúr Tenures Act (II of 1869, B. C.) are in force. In Manbhum, Act X of 1859; and in Hazaribagh, Lohardugga and Singbhum, The Chutiá Nagpúr Landlord and Tenant Procedure Act (I of 1879, B. C.) also prevail.

Chittagong Hill Tracts.

Santál Parganas.

Banki and Angul.

Chutiá Nagpúr.

The districts of Assam are no longer under the administration of the Lieutenant-Governor of Bengal, and will consequently not be affected by this Act. It may, however, be useful to note here that, by the recent decision of the High Court in the case of *Prasidha Narain Koer* v. *Man Koch* (I. L. R., 9 Calc., 330), it is now settled law that the provisions of Act X of 1859 are not in force in the Assam Valley districts, *viz.*, Goalpárá, Kamrup, Darrang, Nowgong, Sibsagar

Assam.

and Lakhimpur. In these and all the other districts of Assam, except Sylhet, the law on the subject of rent is in an unsettled and uncertain state. But in the district of Sylhet, now one of the districts of the Chief Commissionership of Assam, but formerly under the administration of the Lieutenant-Governor of Bengal, the provisions of Act VIII of 1869, B. C., now prevail, having been extended to it by Government Notification of the 24th February, 1870 (see *Calcutta Gazette* of March 2nd, 1870, p. 361). They continued in force in Sylhet on its incorporation with the Chief Commissionership of Assam under Government Notification, No. 1111, of the 22nd August, 1878 (see *Government of India Gazette*, of August 24th, 1878, Part I, p. 533), and will, of course, continue to prevail there after the passing of this Act. The Bengal Tenancy Act may, under sec. 5, Act XIV of 1874, be extended to any of the Scheduled Districts of Bengal, or to any part of such district.

Sylhet.

Repeal.

2. (1) The enactments specified in Schedule I hereto annexed are repealed in the territories to which this Act extends by its own operation.

Dates of commencement of various rent laws.

Act X of 1859 came into operation on the 29th April, 1859. It was amended on the 1st May, 1862, by Act VI of 1862, B. C., which was, in its turn, amended by Act IV of 1867, B. C., on the 21st May, 1867. Act VIII of 1869, B. C., came into operation on the 13th April, 1870, corresponding with the 1st Bysakh of the Bengalli year 1277 (see Government Notification of 24th February, 1870, published in the *Calcutta Gazette* of 2nd March, 1870). All these Acts are repealed in the territories within which this Act came into operation on the 1st November, 1885. Besides these, another Act, it will be observed on reference to Schedule I, is also repealed by this Act, *viz.*, Act VIII of 1879, B. C., which was an Act "to define and limit the powers of Settlement Officers." This is an important change, as the repeal of that Act, taken in connection with the definitions of "landlord" and "estate" in sec. 3, makes it clear that this Act applies to Government estates. Further, in the great majority of cases, settlements of estates and tenures belonging to or managed by Government or the Court of Wards have now to be made under the provisions of Chap. X of this Act. The present Act, therefore, contains not only the Law of Landlord and Tenant, but the Settlement Law of Bengal, whenever a settlement involves an enhancement of rent, and it is intended that such enhancement shall be made obligatory on the raiyats by the settlement.

This Act applies to settlements.

Certain Regulations are also partially repealed by this Act. The portions of these Regulations and the subject-matter of each section repealed are as follows :— Subject of Regulations partially repealed.

REG. VIII OF 1793.

Sec. 51. Enhancement of Talookdars. Penalty for exaction.

Sec. 52. Right of Proprietors to let remaining lands; conditions to be specific. Penalty for exactions.

Sec. 53. Amilnamahs necessary.

Sec. 54. Abwabs to be consolidated with asil.

Sec. 55. No new abwabs. Penalty.

Sec. 64. Instalments to be regulated by harvests.

Sec. 65. No engagements contrary to this Regulation.

REG. XII OF 1805.

Sec. 7. Period for delivery of pottahs in Cuttack.

REG. V OF 1812.

Sec. 2. Proprietors may grant leases for any period.

Sec. 3. And in such form as the contracting parties prefer; but cesses not to be imposed.

Sec. 4. Leases may not be annulled for collusion in case of attachment or sale without decision of Court.

Sec. 26. Judge may appoint manager of *ijmali* estate.

Sec. 27. Removal of such manager.

REG. XVIII OF 1812.

Preamble. Recites doubts as to sec. 12, Reg. V of 1812.

Sec. 2. Leases grantable for any period and at any rent.

Sec. 3. Leases remain in force notwithstanding partition, transfer, &c.

REG. XI OF 1825.

Sec. 4. Cl. 1.—The words "nor if annexed to a subordinate tenure" to end of the clause. This part of the clause provides that an under-tenant shall not be considered exempt from an increase of rent for land annexed to his tenure by alluvion.

(2) When this Act is extended to the Division of Orissa or any part thereof, such of those enactments as are in force in that Division or part, or, where a portion only of this Act is so extended, so much of them as is

inconsistent with that portion, shall be repealed in that Division or part.

As to the enactments now in force in Orissa, see the note to the previous sub-section.

(3) Any enactment or document, referring to any enactment hereby repealed, shall be construed to refer to this Act or to the corresponding portion thereof.

(4) The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

Proceedings commenced under old law.

In sec. 6, Act I of 1868 (The General Clauses Act), it is provided that "the repeal of any Statute, Act, or Regulation shall not affect "anything done, or any offence committed, or any fine or penalty "incurred, or any proceedings commenced, before the Repealing Act "shall have come into operation." The term "proceedings" includes a suit in which a decree has been given (6 Bom., A. C. J., 169). A suit is a "judicial proceeding," and the words "any proceeding" in sec. 6 of Act I of 1868 include all proceedings in any suit from the date of institution to its final disposal, and, therefore, include proceedings in appeal (Full Bench Ruling, I. L. R., 3 Calc., 662). In the same case, in which the above Full Bench ruling was passed, it was ruled by Jackson, J., that sec. 6 of Act I of 1868 covers proceedings taken in execution of decree, which have been commenced before the Repealing Act came into force. (See also *Thakur Prasad* v. *Ahsan Ali*, I. L. R., 1 All., 668.) The result of these rulings is, that suits, appeals, and execution-cases commenced under Act VIII (B. C.) of 1869 must be continued and disposed of under that Act. Appeals and execution-cases commenced after November 1st, 1885, but which relate to decrees passed under the old law, would also seem to be disposable of under the old law.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context :—

New.

(1) "Estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a

district, and includes Government khás maháls and revenue-free lands not entered in any register.

"Estate" means the interest immediately below the paramount interest, which Government has in the land.

"*General registers of revenue-paying and revenue-free lands.*" The Collector's Land-Revenue Registers, A, B, C, and D, prepared under the provisions of the Land-Registration Act, VII of 1876 (B. C.), show, or rather are supposed to show, the different estates (156,087 in number according to the Board of Revenue's Report on the Land-Revenue Administration for 1884-85) into which the country is subdivided, with the names and the character and extent of the interest of the proprietors, managers, and mortgagees of estates and revenue-free properties. A is a register of revenue-paying lands; B, of revenue-free lands; C, a mouzawar register of all lands, revenue-paying and revenue-free; and D, an intermediate register of changes. Land-Revenue Registers.

"*Includes Government khás maháls.*" The inclusion of Government khás maháls in the definition of estate is noticeable, as it makes quite clear, what indeed follows from the repeal of Act VIII of 1879, B. C., by this Act, namely, that the ordinary rent law of Bengal, as contained in this Act, applies to Government estates as well as to estates managed by the Court of Wards, and to ordinary estates. The only advantage in regard to questions connected with the assessment and recovery of rent, which Government now retains over ordinary zemindars, is the Certificate Procedure authorized by Act VII of 1868, B. C. (not repealed by this Act), which is a summary procedure for the recovery of public demands, applicable to Government estates as well as to estates managed by the Court of Wards. Government estates.

(2) "Proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate.

The term "proprietor," as used in this Act, includes Government as as well as the owners of revenue-free lands. As the word "person" under sec. 2, cl. 2, Act I of 1868, includes a company, association or body of individuals, whether incorporated or not, the term "proprietor" will, in this Act, denote any number of proprietors as well as one. The term "proprietor," as far as the Permanent Settlement is concerned, includes zemindars, talukdars, chowdries, mortgagees, and, in case of dispute, the party in possession. "Proprietor," within Meaning of "proprietor.

the meaning of the Land-Registration Act (VII of 1876, B. C.), includes every person in possession of an estate or revenue-free property, or of any interest in an estate or revenue-free property, as owner thereof, and every farmer or lessee, who holds an estate or revenue-free property directly from or under the Collector.

Effect of non-registration of proprietary interests.

Every proprietor of an estate or revenue-free property, or of any interest therein, being in possession of such estate or revenue-free property at the commencement of Act VII of 1876, B. C.,—every joint proprietor of an estate or revenue-free property, being in charge of such estate or revenue-free property, or any interest therein, on the part of the other proprietors, at the commencement of that Act,—every person succeeding after the commencement of that Act to any proprietary right in an estate or revenue-free property, whether by purchase, inheritance, gift, or otherwise,—every joint proprietor assuming charge on behalf of the other proprietors,—and every person assuming charge of an estate or revenue-free property, or of any interest therein, as manager, after the commencement of that Act, is bound to have his name, and the character and extent of his interest, registered in the Collector's Registers under that Act (sec. 38), and no person is bound to pay him rent (sec. 78), unless and until his name has been so registered. There is evidence to show that proprietors, managers, and mortgagees of proprietary interests and of revenue-free properties have hitherto been very remiss in causing their names and interests to be registered, or mutations (on transfer or succession of properties) to be made in the Collector's Registers. It would be well for landlords to remember that, in suits for arrears of rent, brought by a proprietor, who has failed or neglected to register his name in the Collector's Registers, the suit must be dismissed, if the tenant should set up the plea that the proprietor's name has not been duly registered. It is also to be remembered that, in proceedings under Chap. X of this Act, a Revenue-officer may, under Rule 13 (*d*), Chap. VI of the rules framed by the Local Government under this Act (see Appendix I), at his discretion, refuse to recognize as proprietor any person, who is bound to have his name registered, unless and until it appears that his name and the character and extent of his interest have been duly registered under the Land-Registration Act. A Revenue-officer making a settlement of rents under Chap. X, therefore, may refuse to entertain an application for enhancement or settlement of fair rents from a proprietor who is not registered.

The term "*lakhirajdar*," the vernacular expression for "owner of revenue-free land," is commonly applied, it may be mentioned, not only to (*a*) owners of lands held free of Government *revenue*, but also to (*b*) occupants of lands held *rent*-free under the owner of a revenue-paying estate or revenue-free property. The former class of *lakhirajdars*, who are properly so called, are "proprietors" within the meaning of this Act; the latter are tenure-holders, or raiyats, according as they come under the first or second clause of sec. 5. Tenants holding under owners of revenue-free property (class *a*) may be either tenure-holders or raiyats. Tenants holding under holders of *rent*-free land (class *b*) are raiyats or under-raiyats, according as the *lakhirajdar* himself is a tenure-holder or a raiyat. If the *lakhirajdar* is a raiyat within the meaning of cl. 2, sec. 5, his tenants will be under-raiyats, and cannot acquire occupancy rights, save where under-raiyats acquire such rights by local custom. The Sub-Terai Jotedars, whose names are entered in the Collector's Registers, would appear to be proprietors, and, if so, their tenants are raiyats.

Meaning of "lakhirajdar."

(3) "Tenant" means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person.

The term "*land*" has not been defined in this Act. The omission is an intentional one. It was proposed to limit the word "land" in the Act to land used for agricultural and horticultural purposes; but this limitation was deliberately rejected. It is left to the Courts to decide what "land" is, and to what lands the Act applies.

"Land" not defined.

The subject of "homestead" or "*bastu*" land is, however, dealt with in sec. 182 of the Act, which provides that "when a raiyat "holds his homestead otherwise than as a part of his holding as a "raiyat, the incidents of his tenancy shall be regulated by local custom "and usage, and, subject to local custom and usage, by the provisions "of this Act applicable to land held by a raiyat." But when a raiyat holds his homestead as part of his holding, the incidents of the homestead are regulated by the provisions of this Act. In this case, there is no distinction between his homestead land and the agricultural land held by him.

Homestead land.

Excluding homestead, or *bastu*, land from consideration, land may be classified as (1) agricultural and (2) non-agricultural. There can, of course, be no question as to the applicability of the Act to agricultural land, which, it may be mentioned, is either (*a*) raiyati

Agricultural land.

land, to which the provisions of the Act, excepting Chap. XI, are generally applicable, and (*b*) proprietors' private lands,—that is, *khamar*, *nij-jote*, *sír* or *zerát* lands,—to which the provisions of Chap. XI apply. Waste land may be either raiyatí or proprietor's private land, but is ordinarily raiyatí. In determining whether a particular parcel of land is raiyatí or *khamar*, regard must be had to local custom, to the character of the land before the Act came into force, and to other relevant facts; but the presumption is, that all land is raiyatí until the contrary is proved.

Non-agricultural land.

As to non-agricultural land, the applicability of the provisions of this Act is a question of much doubt and difficulty. There are some decisions under Acts X of 1859 and VIII of 1869, B. C., which go so far as to say that the rent-law does not apply to such land at all. Thus, in the case of *Kalikishen Biswas* v. *Srimuttee Janki* (8 W. R., 250), it was said, that "the occupation intended to be protected by sec. 6, Act X of 1859, is occupation of land, the subject of agricultural 'and horticultural cultivation, and used for purposes incidental thereto, 'such as for the site of the homestead, the raiyat or *mali's* dwelling-'house, and so on, and does not include occupation the main object 'of which is the dwelling-house, and when the cultivation of the soil, 'if any there be, is entirely subordinate to that." The cases of *Khellut Chunder Ghose* v. *Amirto* (Ind. Jur., N. S., 426), *Ramdhan Khan v. Haradhan Paramanick* (9 B. L. R., 107 note, 12 W. R., 404), *In re Bramamayi Bewa* (9 B. L. R., 109 note), and *Rani Lalunmonee* v. *Rajah Ajoodhya Ram Khan* (23 W. R., 61) support this view. Other decisions, however, do not go so far, and merely lay down that the right of occupancy and the enhancement provisions of Acts X of 1859 and VIII of 1869, B. C., do not apply to land not used for agricultural or horticultural purposes. Thus, in *Rani Shornomoyi* v. *Blumhardt* (9 W. R., 552), it was held that Revenue Courts had no jurisdiction in a suit for arrears of rent at an enhanced rate from a tenant, to whom land had been leased for the express purpose of building a school and a church; and in *Mohar Ali Khan Pathan* v. *Rám Rotton Sen* (21 W. R., 400) it was held, that rights of occupancy cannot be acquired in lands occupied exclusively by buildings. In *Kali Mohun Chatterjee* v. *Kalikisto Roy* (11 W. R., 183; 2 B. L. R., App., 39), it was held that Act X of 1859 does not apply to a suit for the enhancement of rent of land, situated in the midst of land used for building purposes; while the cases of *Muddon Mohun Biswas* v. *Stalkart* (17 W R., 441; 9 B. L. R, 97), *Rani Doorgasundari Dasi* v. *Bibi*

Right of occupancy and enhancement provisions of old law did not apply to non-agricultural land.

Umdatunnissa (18 W. R., 235; 9 B. L. R., 101), *Naimudin Jawardar* v. *Scott-Moncrieff* (3 B. L. R., 283), *Khairudin Ahmod* v. *Abdul Baki* (9 B. L. R., 103 note), *Church* v. *Ramtanu Shaha* (9 B. L. R., 105 note), and *Poorna Chunder Roy* v. *Sadut Ali* (2 C. L. R., 31) lay down that lands used for building purposes, and not used for agricultural and horticultural purposes, but situated in a town, are not liable to enhancement of rent. This, then, may be regarded as settled law. But an exception to this general rule is made by clause 4, sec. 167 (*post*) of this Act, which provides that a purchaser, at a sale under this Act, of a tenure or holding sold on account of arrears of rent due in respect thereof, may, if he has power to avoid all incumbrances, sue to enhance the rent of land, which is the subject of a "protected interest" of the nature specified in cl. (c), sec. 160. The "protected interest," specified in cl. (c), sec. 160, is "any lease of land, whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship, or burning or burying grounds have been made." Other rulings are to the effect that the provisions of Acts X of 1859 and VIII of 1869, B. C., as to the recovery of arrears of rent, apply to the rent of land irrespective of the purpose for which it is used. Thus, in *Gaetree Dabea* v. *Thakoor Dass* (W. R., Sp. No., 1864, Act X, 78), it was held that a suit for arrears of rent of a *hât* was cognizable by a Revenue Court. (See also the case of *Sheikh Nasur* v. *Sadat Ali*, W. R., Sp. No., 1864, Act X, 102.) The late Mr. Justice Dwarkanath Mitter maintained this view of the question in the cases of *In re Bramamayi Bewa* (9 B. L. R., 109), *Rani Doorga Sundari Dasi* v. *Bibi Umdatun Nissa* (9 B L. R., 111), and *Brijanath Kundu* v. *Lowther* (9 B. L. R., 124), but his opinion was overruled.

In several cases it was held that Act X applied, when rent was sought to be recovered merely for the land upon which houses stood, but not for the houses themselves, or when the rent of the house was the more important item. See *Watson* v. *Govind Chunder Majumdar* (W. R., Sp. No., 1864, Act X, 46); *Tarini Persad Ghose* v. *Bengal Indigo Co.* (2 W. R., Act X, 9), *Matunginee Dassi* (5 W. R., Act X, 60), *Ram Churn Singh Khetree* v. *Meadhun Darjee* (8 W. R., 90), and *Mathuranath Kundu* v. *Campbell* (9 B. L. R., 115 note).

Origin of tenancy to be considered.

When determining the question as to whether land is agricultural or non-agricultural, the origin of the tenancy should be considered. If land has originally been let for agricultural purposes, the presumption is that it will continue subject to the incidents of agricultural

land. Thus it has recently been held, that a raiyat may, with the consent of his landlord, erect buildings on his land, or use part of it for tanks and gardens without losing his right of occupancy in it (*Prosonno Coomar Chatterjee* v. *Jaggannath Bysack*, 10 C. L. R., 25). Under the provisions of secs. 76 to 83 of the present Act, however, a raiyat has every right to erect permanent buildings suitable to the holding, and make other improvements on his land, even against the wishes of his landlord, without losing any of his rights as an agricultural tenant.

(4) "Landlord" means a person immediately under whom a tenant holds, and includes the Government.

A raiyat, *thikadar*, *ijaradar*, or any person to whom rent is payable, is a "landlord" under the Act. It may be well to point out that "landlord" has a very different meaning from "proprietor" under this Act. Neither are all proprietors necessarily "landlords," nor are all landlords necessarily proprietors. An owner of an estate or revenue-free property, who cultivates his estate himself, or by hired labour, and has no tenants, is a "proprietor," but not a landlord; while a raiyat, who collects rent from a sub-raiyat, is a "landlord," but not a "proprietor."

(5) "Rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant:

In section 53 to 68, both inclusive, sections 72 to 75, both inclusive, Chap. XII and Schedule III of this Act, "rent" includes also money recoverable under any enactment for the time being in force as if it was rent.

"*Lawfully payable.*" The term "rent" is, therefore, not restricted to what is "lawfully recoverable," so that it would appear that an amount paid by an under-raiyat in excess of the limits laid down by cls. (*a*) and (*b*), sec. 48 (*post*) may be lawfully payable, and so come under the definition of "rent," though it may not be lawfully recoverable under the provisions of that section. A raiyat landlord, therefore, if this view be correct, when collecting an amount in excess of the amount lawfully recoverable, will not render himself liable to the penalty provided in sec. 75, for the exaction of a sum in excess of the amount of rent lawfully recoverable. (See also note to sec. 48, *post*.)

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"*Payable . . . by a tenant to his landlord.*" It is to be noted that, to be rent, the amount payable or deliverable must be payable or deliverable to the landlord. Hence, a sum of money payable in accordance with an agreement between the tenant and his landlord, not to the landlord himself, but to a third person, (for instance, a superior landlord), is not rent, and cannot be recovered as such. It can, however, be recovered as damages (*Rutnessur Biswas* v. *Hurish Chunder Bose*, I. L. R., 11 Calc., 221).

"*Recoverable under any enactment for the time being in force as rent.*" Thus, sums payable under the Cess Act (IX of 1880, B. C.) to holders of estates or tenures, and under sec. 68 of the Bengal Embankment Act (II of 1882, B.C.), and under the Bengal Survey Act (V of 1875, B. C.), to zemindars and tenure-holders are recoverable as "rent."

(6) "Pay," "payable" and "payment," used with reference to rent, include "deliver," "deliverable" and "delivery."

(7) "Tenure" means the interest of a tenure-holder or an under-tenure-holder.

See note on the definition of tenure-holder given in sec. 5, cl. 1.

(8) "Permanent tenure" means a tenure which is heritable and which is not held for a limited time.

(9) "Holding" means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy.

The term "holding" is often popularly used to denote a tenure or under-tenure, and is sometimes confused with "tenancy." But this is incorrect. A "holding" is the interest of a "*raiyat.*"

Strictly speaking, the interest of an "*under-raiyat*" is not a "holding," but this would appear to be an inadvertence on the part of the framers of this Act.

Suppose a raiyat was let into occupation of certain plots at a particular time, and was let into occupation of other plots at a subsequent time at the same rate of rent. Do the latter plots form a "separate tenancy," or is the holding one? The answer to this question will depend on the arrangement made by the raiyat with the landlord. Ordinarily, the question of one or two holdings will be a matter of

contract, but, contract apart, there would appear to be two separate holdings in the case above supposed.

(10) "Village" means an area included in a village map of the revenue-survey within the same exterior boundary, or, where no such maps have been prepared, such area as any officer appointed by the Local Government in this behalf may determine after local inquiry held on such notice as the Local Government considers sufficient for giving information to all persons interested.

Village.

It is to be noted that the village, as above defined, is limited to the area included in a map of the revenue-survey within the same exterior boundary (where such maps have been prepared), though the village boundary may have been altered by decrees of the Civil Courts since the revenue-survey was made, and though the boundary by possession may not be in harmony with the boundary shown in the map. As rights of occupancy under sec. 20 accrue to "settled raiyats" in all lands which they hold in the village, it becomes necessary that the village boundary, for the purpose of ascertaining the "envelope" of the occupancy right, be demarcated according to the revenue-survey maps, and the rules for the demarcation of village boundaries framed by the Local Government under Chap. X of this Act (see Appendix I) provide that this shall be done. They, however, further provide that when the boundary according to possession is different from the revenue-survey village boundary, it shall also be shown in the map.

Revenue-survey maps have been prepared for all the territories subject to the Lieutenant-Governor of Bengal, except the Chittagong Hill Tracts and the Daminikoh Tract in the Santál Parganas, to which, being Scheduled Districts, the provisions of this Act do not apply. It would, therefore, appear that it is only in cases of new formations by alluvion, or of reclamations of forests, or the like, that the officer appointed by Government under this section will have to determine village areas.

(11) "Agricultural year" means, where the Bengali year prevails, the year commencing on the first day of Bysák, where the Faslí or Amlí year prevails, the year

commencing on the first day of Asin, and, where any other year prevails for agricultural purposes, that year.

Agricultural year.

The Faslí or Amlí year prevails in all the districts of the Patna Division, in the districts of Bhaugulpore and Monghyr, in the Dharampur Pargana in the west of the Purneah district, and in the Godda Subdivision of the Santál Parganas. The 1st November, 1885, corresponded with the 9th Kartick, 1292, according to the Faslí or Amlí year. The Willaity year prevails in Orissa. It commences each year on a varying date. The 1st November, 1885, corresponded with the 18th Kartick, 1293, of the Willaity year. The Mughee year prevails in the district of Chittagong. It begins, like the Bengali year, on the 1st Bysák, and on the 1st November, 1885, it was the 17th Kartick, 1247, according to the Mughee year. The Bengali year prevails in all other parts of Bengal. On the 1st November, 1885, it was the 17th Kartick, 1292, according to the Bengali year. When the agricultural year is not referred to in the Act, the words "year" and "month" in the Act mean a year and month reckoned according to the British Calendar (cl. 3, sec. 2, Act I of 1868).

(12) "Permanent Settlement" means the Permanent Settlement of Bengal, Behar and Orissa, made in the year 1793.

The Permanent Settlement dates from the 22nd March 1793.

(13) "Succession" includes both intestate and testamentary succession.

(14) "Signed" includes "marked" when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to.

(15) "Prescribed" means prescribed from time to time by the Local Government by notification in the official Gazette.

(16) "Collector" means the Collector of a district or any other officer appointed by the Local Government to

discharge any of the functions of a Collector under this Act.

Deputy Collectors and Sub-Deputy Collectors will not come within this definition of "Collector," unless specially empowered by Government to exercise any of the powers of a Collector under this Act.

(17) "Revenue-officer" in any provision of this Act includes any officer whom the Local Government may appoint by name or by virtue of his office to discharge any of the functions of a Revenue-officer under that provision.

(18) "Registered" means registered under any Act for the time being in force for the registration of documents.

Compulsory registration.

Under cl. (*d*), sec. 17, Act III of 1877 (The Indian Registration Act), the "registration of leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent," is compulsory. But, under the proviso to that clause, the Local Government may exempt leases in any particular district for a term of less than five years, and of a rental of less than Rs. 50, from compulsory registration; and, under this proviso, the Local Government has exempted leases in the districts of Gya and Shahabad, if for a term of two years only, from compulsory registration (see Notification in the *Calcutta Gazette* of May 14th, 1866). Under that clause it has been held that, when a kabúliyat for one year contains a provision extending its term to more than a year, its registration is indispensable (*Kisto Kali Moonshee* v. *Agemona Bewa*, 15 W. R., 170). On the other hand, a lease for one year certain, containing an expression on the tenant's part of readiness to hold the land longer at the same rent, if the landlord should desire it, has been held not to be a lease for a term exceeding one year, and therefore need not be registered (*Apu Budgavda* v. *Nurhari Aunajie*, I. L. R., 3 Bom., 21). Further it has been held, that a *daul darkhast*, which is only a proposal for a lease, does not require to be registered, and may, therefore, be admitted in evidence without registration (*Choonee Mundar* v. *Chundee Lall*, 14 W. R., 178; *Bibi Meherunnissa* v. *Abdul Gonny*, 17 W. R., 509; *Syed Safdar Reja* v. *Amjad Ali*, I. L. R., 7 Calc., 703). But if the proposal to lease is accepted, and the proposal and acceptance constitute

a contract in writing, then such contract must be registered (*Lal Jah* v. *Neppoo*, I. L. R., 7 Calc., 717).

Under cl. (*c*), sec. 18 of Act III of 1877, the registration of leases of immoveable property for any term not exceeding one year, and leases exempted by the Local Government from registration, is optional. Optional registration.

Under sec. 49, no document, the registration of which is compulsory, can be received in evidence, unless it has been duly registered, and, in this case, no secondary evidence of its execution is admissible (*Mussamut Kaboolun* v. *Shamshir Ali*, 11 W. R., 16). But the plea as to the inadmissibility of evidence for want of registration must be taken in the Court below, otherwise it cannot be allowed in special appeal (*Grish Chunder Roy Chowdry* v. *Srimati Amina Khatun*, 3 B. L. R., App., 125).

The term "lease" is not defined in the present Act. In sec. 3, Act III of 1877, it is defined as including "a counterpart, kabúliyat, an undertaking to cultivate or occupy, and an agreement to lease." In sec. 3, cl. 12, Act I of 1879, it is defined as meaning "a lease of immoveable property," and as including "(*a*) a pattá, (*b*) a kabúliyat, or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy, or deliver, or pay rent for, immoveable property, (*c*) any instrument by which tolls of any description are let, and (*d*) any writing on an application for a lease intending to signify that the application is granted." These definitions are, however, too wide for the purposes of this Act. Perhaps, the best definition of the term is that given in Field's Digest, p. 3, where it is defined as meaning "a contract creating or continuing the relation of landlord and tenant, and executed by the landlord in favour of the tenant." It is to be observed that, in this Act, the word "lease" is sometimes used alone, and sometimes the words "written lease" are used. In all these cases, "lease" would appear to mean a written lease, and not to include a parol contract of letting, though there is room for doubt on this point. Art. 13, Sched. II, Act I of 1879, exempts from stamp-duty (*b*) a lease executed in the case of a cultivator without the payment or delivery of any fine or premium, when a definite term is expressed, and such term does not exceed one year, or when the annual rent reserved does not exceed one hundred rupees (see *In re Bhaván Bádkar*, I. L. R., 6 Bom., 691); (*c*) the counterpart of any lease granted to a cultivator. Meaning of "lease."

The principal changes made by the present Act in the law as to the registration of documents, concerning the relations of landlord and Changes made by present Act

in the registration of documents concerning the relations of landlord and tenant.

tenant, are (1) those contained in secs. 12 to 17, by which the registration, under the law for the registration of documents of the transfer of permanent tenures, before a registering officer, is rendered compulsory. Under the old law, dependent talukdars and other persons possessing a permanent transferable interest in land, intermediate between the proprietor and the cultivator, were bound to register *in the sherista of the zemindar, or superior tenant to whom rents were payable*, all transfers of such taluks, but were not bound to register before a registering officer. The changes made in this respect are described in detail in the notes to secs. 12 to 17.

(2) Rents of occupancy-raiyats can only be enhanced under this Act by suit or by contract. A contract for the enhancement of the rent of an occupancy-raiyat must be in writing, and must be registered, except in the case specified in the proviso (*i*), sec. 29.

(3) Similarly, under sec. 43, the rent of a non-occupancy-raiyat cannot be enhanced, except by registered agreement, or by an agreement under sec. 46 (*i.e.*, obtained through the medium of a Court), as an alternative to ejectment. Sec. 43 is subject to a similar proviso to that made applicable by sec. 29 to occupancy-raiyats.

(4) Under sec. 48, the rent recoverable from an under-raiyat cannot exceed the rent paid by the raiyat by more than 25 per cent. except under a registered lease or agreement, when it can exceed this rent by not more than 50 per cent. Further, under sec. 85, a sub-lease by a raiyat, if not registered, is not valid, unless made with his landlord's consent, and a sub-lease cannot be admitted to registration, if it purports to create a term exceeding nine years. A sub-lease, registered before the commencement of this Act, is not valid for more than nine years from the commencement of the Act.

(5) The registration of documents is also affected by the provisions of secs. 175 and 176. Under sec. 175 a document, creating an incumbrance and executed before the commencement of this Act, and not required to be registered under sec. 17 of the Registration Act, must be admitted to registration, if presented within a year of the commencement of this Act, and, notwithstanding anything contained in Part IV of the Registration Act, which prescribes four months from the date of execution as the time within which documents must be presented for registration. Under sec. 176, the registering officer is bound to notify the incumbrance to the landlord.

Besides the "registration" of documents under the Registration Law, another kind of registration is mentioned in sec. 80, namely, the

registration of improvements before a Revenue-officer, the rules for which will be found in Appendix I.

It would appear that a registering officer cannot refuse to admit to registration a contract made between a landlord and a tenant, purporting to bar in perpetuity the acquisition of an occupancy-right, or contravening in any other way the provisions of secs. 178 and 179 of the Act, though such contract would be illegal and invalid. The illegality or immorality of a contract is no ground for refusing to admit it to registration. A sub-lease for a term of more than nine years cannot, however, under sec. 85, be admitted to registration, and it is a curious fact that this is apparently the only instance in which registration may be refused on the ground of the illegality, immorality, or invalidity of the document.

CHAPTER II.

CLASSES OF TENANTS.

Classes of tenants.

4. There shall be, for the purposes of this Act, the following classes of tenants, (namely) :—

New.

(1) tenure-holders, including under-tenure-holders,

(2) raiyats, and

(3) under-raiyats, that is to say, tenants holding whether immediately or mediately under raiyats ;

and the following classes of raiyats, (namely) :—

(*a*) raiyats holding at fixed rates, which expression means raiyats holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity,

(*b*) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and

(*c*) non-occupancy-raiyats, that is to say, raiyats not having such a right of occupancy

It is to be observed that occupancy rights, whether transferable or non-transferable, are distinctly excluded from the category of tenures. The decision of the High Court in the case of *Krishtendra Roy* v. *Aena Bewa* (I. L. R., 8 Calc., 675 ; 10 C. L. R., 399), according to which the interest of any raiyat who had a transferable jote is an "under-tenure," is accordingly set aside by the provisions of this section.

Meaning of "tenure-holder" and "raiyat."

5. (1) "Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes also the successors in interest of persons who have acquired such a right.

Definition of "tenure-holder."

The definition of tenure-holder, given in this section, is not an exhaustive one. It has been found impossible, the Rent Commission Report says (see p. 10), "to discover any principle of distinction between raiyats and tenure-holders, or under-tenure-holders, which will hold good universally, or even in a large majority of cases. If cultivation be taken as the test whether the interest of a particular tenant is a tenure, (or under-tenure), or a ryoti holding, a *talukdar*, tenure-holder, or under-tenure-holder may cultivate land forming part of his *taluk*, tenure, or under-tenure, while the person commonly called a raiyat may have sublet his entire holding, and may not himself cultivate a single square foot. It is impossible, therefore, to say that, under all circumstances, the person who cultivates is a raiyat, and the person who does not cultivate is a tenure-holder. If the receipt of rents from persons in the actual occupation of the land be considered the essence of a tenure-holder or under-tenure-holder, then we find raiyats also subletting and receiving rents from their tenants in actual occupation. If hereditability be tried, the raiyat's interest, the raiyat's holding is heritable as well as the *taluk*. Is transferability the test? The raiyat's *jumma*, independently of Acts X of 1859 and VIII of 1869, is commonly transferable by custom. Is saleability for its own arrears set up as the true distinction? The landlord, of his own option, brings raiyat's holdings to sale in execution of decrees for rent, while a tenure or under-tenure is not subject to the special law for the sale of under-tenures for the recovery of arrears of rent due in respect thereof, unless it is so saleable by the title-deeds or established usage of the country. If the quantity of rent paid by the tenant be supposed to be the point of distinction, then, in Rungpore the rent of a jote varies from one rupee to half a lakh of rupees; while in other districts the rent of many *taluks* is but a few rupees."

As the law stood before the commencement of this Act, the decision of the question whether a particular individual was a tenure-holder, or a raiyat, was entirely dependent on the discretion and judgment of the individual officer who had to decide it; and as each individual

was a law to himself, it was impossible to forecast the decision in any particular case. The definition of "tenure" in this Act, if not complete, at least affords some indication of the principle on which the Courts should proceed.

The principle of the definition is the same as that of the High Court decision in the case of *Durga Prosonno Ghose* v. *Kali Das Dutt* (9 C. L. R., 449), in which it is said, "the only test of a raiyat's interest is to see in what condition the land was when the tenancy was created. If raiyats were already in possession of the land when the interest was created, and the interest was a right, not to the actual physical possession of the land, but to collect the rents from the raiyats, the interest is not raiyati" (in other words, it is a tenure). "If, on the other hand, the land was jungle, or uncultivated, or unoccupied, and the tenant was let into physical possession of the land, the interest would be raiyati, and the nature of that interest would not be altered by the fact of the tenant subsequently subletting to under-tenants."

Further assistance is given to the Courts in the task of distinguishing between a tenure-holder and a raiyat by the provisions of cl. 5 of this section, which are new, and prescribe that when a tenant holds more than a hundred bighas of land, he shall be presumed to be a tenure-holder, and not a raiyat; but there is no corresponding presumption as to the status of a tenant holding less than one hundred bighas of land, who may consequently be either a tenure-holder, under-tenure-holder, or raiyat.

The following illustrations, taken from the Rent Commission's Draft Bill, will further elucidate the question of what is a tenure-holder.

Illustrations.

(*a*.) "A *patni* interest is a tenure."

(*b*.) "An *ijarah*, or farm for a term of years, is a tenure."

(*c*.) "A holds 120 bighas of valid revenue-free land, situate within the limits of B's revenue-paying estate, and not included under any entry in the General Register of Revenue-free lands, maintained by the Collector of the district, under the law for the time being in force. This land is in the actual possession of raiyats, who pay their rents to A."

(*d*.) "B, the proprietor of a revenue-paying estate, makes a rent-free grant to A of 50 bighas of land, included in such estate, and in the actual possession of raiyats. A, by virtue of such grant, becomes entitled to the rents payable by those raiyats. A's interest in these 50 bighas is a tenure."

The third of these illustrations applies to the case of a *lakhirajdar*, who holds revenue-free land. The fourth applies to a *lakhirajdar*,

2 : 20

who is the holder of rent-free land. The land mentioned in illustration (*c*) is, under this Act, an estate; and the *lakhirajdar*, a proprietor... The *lakhirajdar* mentioned in illustration (*d*) is, in the case supposed, a tenure-holder; but if the land were in his own actual occupation, he would be a raiyat.

(2) "Raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

Definition of "raiyat."

The definition of "raiyat" here given is in accordance with the High Court rulings under the old law in the cases of *Ram Mungul Ghose* v. *Lukhee Narain Saha* (1 W. R., 71) and *Kalee Churn Singh* v. *Ameerooddeen* (9 W. R., 579). The definition is not an exhaustive one. It is to be noted that it is not necessary that a raiyat should either be an actual cultivator, or that his land should be actually under cultivation. It is sufficient, if he has a right to cultivate.

(3) A person shall not be deemed to be a raiyat unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(4) In determining whether a tenant is a tenure-holder or a raiyat, the Court shall have regard to—

(*a*) local custom; and

(*b*) the purpose for which the right of tenancy was originally acquired.

This section must be read in connection with sec. 183, which lays down that "nothing in this Act shall affect any custom, usage, or customary right, not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions." On this subject,

see note to sec. 183. Clause (*b*) is of much importance in connection with cases in which the tenant has erected buildings on the land. It has been repeatedly held by the High Court that, when a tenant has taken land for agricultural purposes, and has erected buildings on it, he still continues a "raiyat." See *Khujoorunnissa Begum* v. *Ahmed Reza* (11 W. R., 88), *Lal Sohoo* v. *Deo Narain Singh* (I. L. R., 3 Calc., 781; 2 C. L. R., 295), *Prosonno Coomar Chatterjee* v. *Jagunnath Bysack* (10 C. L. R., 25), *Prosonno Coomaree Dabea* v. *Sheikh Rutton Bepary* (I. L. R., 3 Calc., 696). On the other hand, where it appears that the land was originally let for building purposes, or that the tenant has, with his landlord's consent, erected houses on it, and resided there for a long time, it has been held that a Court will be justified in presuming that the grant was of a permanent nature. The tenant is then not a "raiyat," but, provided the rent law is applicable to the land, a tenure-holder. *Prosonno Coomar Chatterjee* v. *Jagunnath Bysack* (10 C. L. R., 25), *Gungadhur Shikdar* v. *Ayimuddin Biswas* (I. L. R., 8 Calc., 960; 11 C. L. R., 281).

(5) Where the area held by a tenant exceeds one hundred standard bíghás, the tenant shall be presumed to be a tenure-holder until the contrary is shown.

The presumption raised by this sub-section is, of course, a rebuttable one.

It should be noted that, although the tenant, who holds more than one hundred bíghás, shall be presumed to be a tenure-holder (or under-tenure-holder), whether he or his landlord wishes it or not, there is no presumption as to the tenant who holds one hundred bíghás or less. He may be a tenure-holder, or raiyat, as he or his landlord wish and agree at the time of commencement of the tenancy, or subsequently, accordingly as he comes under the definition of tenure-holder or raiyat, as given in this Act. It has been asked with reference to the provisions of this chapter, "must a tenant belong to only one of the classes of tenants mentioned in sec. 4, or can he belong to more than one of them?" The answer would seem to be that, in respect to the same tenure or holding, a tenant cannot belong to more than one of these classes of tenants, but there is nothing to prevent his belonging to more than one of them in respect to different tenures or holdings.

CHAPTER III.

TENURE-HOLDERS.

Enhancement of Rent.

Tenure held since Permanent Settlement liable to enhancement only in certain cases.

Reg. VIII of 1793, s. 51.

6. Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

(*a*) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under which the tenure is held, or

(*b*) that the tenure-holder, by receiving reductions of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

This section applies to tenures held not at a fixed rent or rate of rent.

This section applies to tenures which have been held from the time of the Permanent Settlement, but *not at a fixed rent, or fixed rate of rent.* Tenures which have been held from the time of the Permanent Settlement at a fixed rent, or fixed rate of rent, are dealt with in sec. 50, and it will be seen on reference to that section that the rent of such tenures cannot be enhanced except on proof of increase in area. It would at first sight appear from there being no mention of alteration in area in this section (*i.e.*, sec. 6), that tenures held from the time of the Permanent Settlement, but not at a fixed rent, or fixed rate of rent, are not liable to enhancement on the ground of increase in area; while from the terms of cl. (*b*) it would seem, as if there were no provision made for the reduction of a tenure-holder's rent on account of a diminution in the area of his tenure. But this is not the case. The present section must be read in connection with sec. 52, which provides that *every tenant* shall be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him; and shall be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist.

The provisions of the present section are the same as those of sec. 51, Reg. VIII of 1793, with the exception of a slight change in the wording of cl. (*b*), necessitated by the fact that the enhancement and reduction of rent, owing to increase and decrease of area, are provided for by a subsequent section.

No notices of enhancement required by this Act.

Hitherto, before a proprietor could proceed to enhance the rent of his tenure-holder under sec. 51, Reg. VIII of 1793, he has been required by a long series of High Court decisions[1] to give the talukdar a notice, specifying the grounds on which he is about to enhance, though the law itself was silent on the subject. The present Act does not prescribe the issue of any notices of enhancement. Such a large percentage of cases has failed in the past, owing to absence of proof of service of these notices, or owing to the notices being defective in form, that the issue of notices of enhancement has, in this Act, been altogether dispensed with. The institution of the enhancement-suit is now all the notice that is required to be given to the tenant.

Evidence of tenure being held from time of Permanent Settlement.

As to the amount of evidence required to show that a tenure has been held from the time of the Permanent Settlement, it is to be observed that it is not necessary that a taluk should have been registered at the time of the Decennial Settlement. It is sufficient to show that the tenure existed, and was capable of being registered at the time of the Decennial Settlement (*Bama Sundari Dasi* v. *Radhika Chowderani*, 13 Moo I. A., 248; 4 B. L. R., P. C., 8; 13 W. R., P. C., 11; *Rajah Nilmoni Singh Bahadoor* v. *Ram Chockerbortti*, 21 W. R., 439).

"*Conditions under which the tenure is held.*" On the subject of the enhancement of the rent of *ghatwali* and other service tenures, see the note to sec. 181.

Onus of proof.

The onus of proof, when the question arises as to whether a tenure has been held from the time of the Permanent Settlement or not, will ordinarily lie on the tenure-holder, who raises this plea (*Baboo Gopal Lall Thakoor* v. *Teluck Chunder Rai*, 10 Moo. I. A., 183; 3 W. R., P. C., 1.) But in the case of *lakhiraj* lands, resumed by Government, and subsequently purchased by a zemindar, who seeks to enhance the rent, it lies on the zemindar to show that the land was included in the zemindari at the time of the Permanent Settlement (*Ahsanallah* v. *Bassarat Ali Chowdry*, I. L. R., 10 Calc., 920).

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[1] 12 W R., 112, 320, 506; 13 W R., 163; 14 W. R, 25; 15 W. R., 351; 7 B. L. R., App., 47; 19 W. R., 338; 21 W. R., 439.

Limits of enhancement of rent of tenures.

7. (1) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate, payable by persons holding similar tenures in the vicinity.

This is new.

Customary rate.

The expression "customary rate" now takes the place of "the pargana or current rates," which was the limit up to which a zemindar, proceeding under sec. 51, Reg. VIII of 1793, could hitherto enhance (*Bama Sundari Dasi* v. *Radhika Chowderani*, 13 Moo. I. A., 249; 4 B. L. R., P. C., 8). The Courts have hitherto held that the rents of talukdars are not to be enhanced on the same grounds as those on which the rents of occupancy raiyats were enhanceable under the old law. Accordingly, in numerous cases it has been laid down, that talukdars' rents are to be enhanced according to the rates paid by talukdars of a similar description, and holding the same quality of land, and with similar advantages, and not according to *ryotwari* rates (*Mohima Chunder Day* v. *Guru Dass Sen*, 7 W. R., 285; *Moro Sundari Chowdherani* v. *Anondo Ghose Chowdry*, 7 W. R., 459; *Dhunput Singh* v. *Gooman Singh*, 9 W. R., P. C., 3; *Manikarnika Chowdry* v. *Anondo Moyi Chowdry*, 10 W. R., 245; *Soorasoonderee Dabea* v. *Golam Ali*, 19 W. R., 142).

(2) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

In determining what is a fair and equitable rate under this clause, regard should be had to the considerations mentioned in the next clause. The provisions of sec. 27, which lay down a presumption as to the fairness and equity of existing rents, apply only to occupancy raiyats. The same presumption, however, is made applicable to all rents by sec. 104; but under that section this presumption will only arise in cases in which settlement proceedings are being held under the provisions of Chap. X of the Act.

(3) In determining what is fair and equitable, the Court shall not leave to the tenure-holder as profit less than ten per centum of the balance which remains after deducting from the gross rents payable to him the

expenses of collecting them, and shall have regard to—

(*a*) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest, whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation; and

(*b*) the improvements, if any, made by the tenure-holder or his predecessors in interest.

Tenure-holder's profits

The case of *Banchanund* v. *Horgopal Bhadery*, 1 Sel. Rep., 145, first laid down the rule, which should be followed when it is impossible to ascertain what the parganah talukdari rates are, and fixed the customary profit of the talukdar at ten per cent. The principle laid down in this decision was afterwards adopted by the Legislature in Reg. V, 1812, sec. 8, and, though this section was repealed by Act X of 1859, its principle was generally recognized in the assessment of such tenures (see *Mahomed Aynuddeen* v. *Baboo Rajendro Chandra Neogi*, 2 Board's Rep., 749). In the case of *Ramkant Dutt* v. *Ghulam Nubbee Chowdry* (2 Sel. Rep., 55), however, the Court, following "local custom," held, that the talukdar was entitled to hold free of assessment 4 kanees in every drone, as *jibka*, (or land granted for the maintenance of a family), and 2 kanees, 4 gundas per drone, as *mattan* (or land allotted as remuneration for bringing waste lands into cultivation). In the case of *Rani Swornomoyi* v. *Gauri Persad Das* (3 B. L. R., A. C., 270), only 6½ per cent. was allowed as the talukdar's profit. The Legislature in the present section follows the rule laid down in *Banchanund* v. *Horgopal Bhadery* and sec. 8, Reg. V of 1812, to this extent, that it fixes 10 per cent. as the minimum percentage of profit to be left to the tenure-holder; but it fixes no maximum. At one time it was proposed to restrict the tenure-holder's profits to a percentage of 30 per cent., and, on the other hand, to provide that the enhanced rent should not be more than double the previous rent. But both these restrictions were ultimately abandoned, and the section now provides

that a profit of at least 10 per cent. must be left to the tenure-holder, while he can obtain as much more as the Court may think fair and equitable.

(4) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

Power to order gradual enhancement.

8. The Court may, if it thinks that an immediate increase of rent would produce hardship, direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the enhancement allowed has been reached.

This is new.

Rent once enhanced may not be altered for fifteen years.

9. When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the fifteen years next following the date on which it has been so enhanced.

This is new.

Other incidents of tenures.

Permanent tenure-holder not liable to ejectment.

10. A holder of a permanent tenure shall not be ejected by his landlord except on the ground that he has broken a condition on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected:

Provided that where the contract is made after the commencement of this Act, the condition is consistent with the provisions of this Act.

Permanent tenures.

The question what tenures are permanent, and what are not, is an important one. Tenures become permanent (1) by law, (2) by contract, express or implied, and (3) by custom and course of dealing

therewith. *Patni* tenures, under Reg. VIII of 1819, are instances of tenures, which become permanent by express provision of law, and there is of course no difficulty about them. There is also no difficulty about tenures made permanent by the express contract of the parties. But there is often very great difficulty in determining whether tenures, which are not made permanent by law or express contract, are of a permanent nature or otherwise. In such cases it is important to consider the name and conditions of the tenure, the terms of the instrument by which, and the circumstances in which, it was created, and, as far as can be ascertained, the intention of the parties. (See *Robert Watson and Co.* v. *Mohesh Narain Roy*, 24 W. R., 176; and *Sheo Pershad Singh* v. *Kally Dass Singh*, I. L. R., 5 Calc., 543.) Sometimes, the name of the tenure in itself will settle the question. Thus, in *Tarini Churn Gangooly* v. *Watson* (3 B. L. R., A. C., 437; 12 W. R., 413), it was held that the term "*patni taluk*" *primâ facie* imports a hereditary tenure. There are, however, conflicting rulings as to the effect of the use of such terms as *mokarari* and *istimrari* in an instrument creating a tenure. Thus, it has been held that these words in a pottah must be taken in themselves to convey a hereditary right in perpetuity (*Mussamat Lukhu Kowar* v. *Roy Hari Krishna Sing*, 3 B. L. R., A. C., 226; 12 W. R., 3; *Karunakar Mahati* v. *Niladhro Chowdhry*, 5 B. L. R., 652; 14 W. R., 107). But in *Rajah Lilanund Singh Bahadur* v. *Thakur Munorunjan Singh* (13 B. L. R., 125) a *quære* was raised as to whether, in the absence of any usage, the words *mokarari istimrari* mean permanent during the life of the grantee, or permanent as regards hereditary descent. In several cases it has been held, that the word *mokarari* alone in a pottah does not necessarily import perpetuity (*Govt. of Bengal* v. *Nowab Jafur Hossain Khan*, 5 Moo. I. A., 467; *Sheo Pershad Singh* v. *Kally Dass Singh*, I. L. R., 5 Calc., 543; *Bilasmoni Dasi* v. *Rajah Sheo Pershad Singh*, I. L. R., 8 Calc., 664). The words "*tikka mohto*" in a pottah have also been held not to be tantamount to *maurasi* or *istimrari*, and not to import a permanent and hereditary lease at a fixed rent (*Nuffer Chunder Shaha* v. *Gossain Jysingh Bharuttee*, 3 W. R., Act X, 144). The words "year by year" in a pottah have also been held not to convey a hereditary lease at a fixed rent (*Panchanun Bose* v. *Peari Mohun Deb*, 2 W. R., 225). *Jungleburi*, or reclaiming leases, have been held to convey permanent tenures and at a fixed rent (*Golam Ali* v. *Baboo Gopal Lall Thakur*, 9 W. R., 65; 19 W. R., 141).

The *surburakaree* tenures of the Katak district may be cited as

instances of tenures which are permanent and hereditary by custom (*Sudanund Mytee* v. *Nowruttun Mytee*, 3 B. L. R., 280; 16 W. R., 290). Kharakpore *ghatwali* tenures (in Bhirbhum) are also permanent and hereditary tenures (*Leelanund Sing Bahadur* v. *Thakur Munrunjun Singh*, I. L. R., 3 Calc., 251). But *gorabundi* tenures do not appear to be more extensive than occupancy rights (*Mohunt Chutterbhuj Singh* v. *Janki Pershad Singh*, 4 C. L R., 298).

There are numerous decisions which show that tenures become permanent by the course of dealing therewith by the parties. Thus, it has been held that though a pottah does not contain the word *mokarari*, or equivalent words of limitation as "from generation to generation," and, therefore, cannot be presumed *primâ facie* to grant a *mokarari istimrari* tenure, yet evidence of long uninterrupted enjoyment at a fixed unvarying rent will supply the want of words of limitation in a pottah (*Dhunput Singh* v. *Gooman Singh*, 11 Moo. I. A., 433; *Gopal Lall Thakoor* v. *Tilack Chunder Rai*, 10 Moo. I. A., 191; 3 W. R., P. C., 1; *Rajah Satyasaran Ghosal* v. *Mohesh Chunder Mitter*, 12 Moo. I. A., 263; 2 B. L. R., P. C., 23; 11 W. R., P. C., 10; *Kolodip Narain Singh* v. *Government of India*, 14 Moo. I. A., 247; 11 B. L. R., 71). In another case, mere continuous payment of rent for about a hundred years was held to give rise to a presumption that the tenant held under a *maurasi* title (*Brojo Nath Kundu* v. *Lukhi Narain Addi*, 7 B. L. R., 211). But in a recent case (*Nobin Chunder Dutt* v. *Modun Mohun Pal*, I. L. R., 7 Calc., 697) it has been held that the mere fact of long possession does not raise the presumption that a tenure is a permanent one.

Occupation of land with buildings.

The rulings as to whether the long occupation of land with buildings will raise a presumption that the nature of the tenure is permanent, are somewhat conflicting. In *Addoyto Churn Dey* v. *Peter Das* (13 B. L. R., 417; 17 W. R., 383) no such presumption was held to have arisen. In *Prosonno Coomaree Dabea* v. *Sheikh Rutton Bepary* (I. L. R., 3 Calc., 696) it was said that there was no law in this country which converts a holding at will from year to year, or for a term of years, into a permanent tenure, merely because the tenant, without any arrangement with his landlord, builds a dwelling-house upon the land demised. These rulings have been followed in the very recent case of *Arut Sahoo* v. *Prandhan Pykura* (I. L. R., 10 Calc., 502), in which it was held that, in the case of a tenant of some homestead land in Orissa, who in some settlement-proceedings had been recorded as the tenant at a stated rent, the Court was not bound to presume that the origin of the

tenant's title was a grant to continue in permanent possession. On the other hand, in *Brajanath Kundu Chowdry* v. *Stewart* (8 B. L. R., 216), in which a landlord had allowed his lessee to invest capital in erecting buildings on land let for cultivation, and had raised no objection for a considerable number of years, he was not allowed to disturb the holding. Then, in *Prosonno Coomar Chatterjee* v. *Jagunnath Bysack* (10 C. L. R., 25), it was held that, though the mere circumstance of a tenant occupying buildings upon property would not justify the Court in presuming a permanent grant, unless it could be shown that they were erected by him or his predecessors, yet, when land was let for building purposes, or the tenant, with the knowledge of his landlord, laid out large sums upon the building, that fact, coupled with a long continued enjoyment of the property by the tenant or his predecessors, might justify a Court in presuming a permanent grant. Finally, in *Gangadhar* v. *Ayimuddin Biswas* (I. L. R., 8 Calc., 960; 11 C. L. R., 281), it has been said that when it is conceded that lands were not let out for agricultural purposes, and when they had apparently been let out more than sixty years before the suit for building purposes, and the defendants' ancestors had erected thereon buildings of a substantial character, and had, with the defendants, resided thereon from first to last, the Court is at liberty to presume that the grant was of a permanent character.

Ejectment of permanent tenure-holders.

It is important to notice that, under this section, a permant tenure-holder cannot be ejected from his tenure except on the ground that he has broken a condition of his tenancy, consistent with the provisions of this Act, on breach of which he is, under his contract, liable to be ejected. This was also the case under the former law. (See *Mohunt Buloram Doss* v. *Jogendranath Mullik*, 19 W. R., 349.) A permanent tenure-holder cannot, therefore, be ejected for non-payment of his rent. The remedy of his landlord in this case is to bring the tenure to sale. In this respect, an occupancy-raiyat stands on the same footing as a tenure-holder, but he can also be ejected on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy (sec. 25). This provision of course does not apply to tenure-holders. Non-occupancy raiyats stand in a much inferior position to tenure-holders and occupancy-raiyats. A non-occupancy-raiyat can be ejected (*a*) for non-payment of arrears of rent, (*b*) for rendering the land unfit for the purposes of the tenancy, (*c*) for breaking a condition of his contract, on breach of which he is liable to be ejected, (*d*) on the ground of expiry of his initial lease if

it be a registered one, and (*e*) for refusing to pay a fair and equitable rent (sec. 44), or on the ground that the term for which he is entitled to hold at such rent has expired.

As to what breach of the conditions of the contract will render a tenure-holder liable to ejectment, it may be noted that though, in the case of service tenures, the landlord may not, at his own pleasure, dispense with the services and take back the lands (*Baboo Koolodip Narain Singh* v. *Mahadeo Singh*, 6 W. R., 199; *Koolodeep Narain Singh* v. *Government*, 14 Moo. I. A., 247; 11 B. L. R., P. C., 71; *Leelanund Singh Bahadoor* v. *Thakur Munurunjun Singh*, I. L. R., 3 Calc., 259), yet a distinct refusal to perform the services will be such a breach of the conditions of the tenancy as will subject the tenant to ejectment (*Hurrogobind Raha* v. *Ram Rutno Dey*, I. L. R., 4 Calc., 67). But whatever conditions the tenure-holder may agree on with his landlord as rendering him liable to be ejected, he cannot make a contract, enabling his landlord to eject him otherwise than in accordance with the provisions of this Act. (See sec. 178, cl. (*c*), *post*.)

Suits to eject a tenure-holder on the ground of a breach of a condition, in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach, must, under art. 1, Sched. III of this Act, be brought within one year of the date of the breach; and, under sec. 155 (*post*), before ejecting him, the landlord is bound to give him a notice and afford him an opportunity of remedying and paying reasonable compensation for the breach of the conditions of his lease complained of. Under the former law, the Courts have in such cases always granted relief from forfeiture, and declined to eject the tenant for a breach of a condition of his lease which is susceptible of being remedied (*Mathoora Mohan Pal Chowdery* v. *Ram Lall Bose*, 4 C. L. R., 469; *Mahomed Amir* v. *Dianut Ali*, 9 C. L. R., 185; *Duli Chand* v. *Raj Kishor*, I. L. R., 9 Calc., 88; 11 C. L. R., 326).

Transfer and transmission of permanent tenure.

11. Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immoveable property.

Transferability of permanent tenures.

The provisions of this section seem to make a change in the law for hitherto some permanent tenures have been transferable, and others, non-transferable. Now all permanent tenures are made transferable and heritable, "subject to the provisions of this Act." These

words would seem to have reference to the provisions of sec. 183 of the Act, which lay down that nothing in this Act shall affect any custom, usage, or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions. It is therefore an open question whether permanent tenures, not transferable and heritable before, are made transferable and heritable now. There are very few instances, however, of permanent tenures which are not heritable, though, in *Raja Lilanund Singh Bahadur* v. *Thakoor Munrunjun Singh* (13 B. L. R., 125), a *quære* was raised as to whether, in the absence of any usage, words implying permanency in the tenure implied anything more than permanency for the life of the grantee. But cases of permanent tenures, which are not transferable, are not numerous. Of these, the ghatwali tenures of Bhirbhum are instances, but such tenures are specially exempted from the provisions of the Act, by sec. 181 (which sec, *post*). But even such tenures become transferable, if the zemindar assents to and accepts the transfer. Such assent and acceptance, it has, in a recent case, been said, may be presumed from the fact of the zemindar's having made no objections to a transfer for a period of over twelve years, and, when such a fact has been found, a Court ought to recognize such a transfer (*Anundo Rai* v. *Kali Persad Singh*, I. L. R., 10 Calc., 677). *Maurasi-Survarakari* tenures in Orissa also are not transferable without the consent of the zemindar, though they are heritable (*Bhuban Pari* v. *Shamanund Dey*, I. L. R., 11 Calc., 699).

Instances of permanent tenures held to be transferable are more numerous. (See *Sudanund Mytee* v. *Nourutton Mytee*, 3 B. L. R., 280; 16 W. R., 290; *Brajanath Kunda Chowdry* v. *Lukhi Narayan Addi*, 7 B. L. R., 211; *Punye Chunder Sircar* v. *Hem Chunder Chowdhry*, I. L. R., 10 Calc., 496.) In certain cases the Courts have held, that tenures granted for the purposes of building are transferable. Thus, in *Beni Madhob Bannerji* v. *Jai Krishna Mookerjea* (7 B. L. R., 152; 12 W. R., 495), it was held, that such tenures are, by the custom of the Hooghly district, transferable. In this case, Peacock, C. J., expressed an opinion that when land was leased for the purpose of living upon such land, the tenure, in the absence of evidence to the contrary, is assignable. In another case, the cause of action arising in the Tipperah district, in which the tenant had been permitted to erect a thatched dwelling-house with mud walls, and to dwell in it for more than forty years, it was held that he had an assignable interest in the house and land, which could, therefore, be seized and sold in execution

of a decree (*Doorga Persad Misser* v. *Brindaban Sookul*, 7 B. L. R., 159.)

Heritability of permanent tenures.

Permanent tenures are almost invariably heritable, even when not transferable (*Watson* v. *Jaggeshar Atah*, Marsh, 330; *Mussamat Lakhee Kowar* v. *Roy Hari Krishna Sing*, 3 B. L. R., 226; 12 W. R., 3; *Karunakar Mahati* v. *Niladhro Chowdhry*, 5 B. L. R., 652; 14 W. R., 107). The present section makes no change in the existing law in this respect.

Voluntary transfer of permanent tenure.

12. (1) A transfer of a permanent tenure by sale, gift or mortgage (other than a transfer by sale in execution of a decree or by summary sale under any law relating to patní or other tenures) can be made only by a registered instrument.

This is new.

(2) A registering officer shall not register any instrument purporting or operating to transfer by sale, gift or mortgage, a permanent tenure unless there is paid to him, in addition to any fees payable under the Act for the time being in force for the registration of documents, a process-fee of the prescribed amount and a fee (hereinafter called "the landlord's fee") of the following amount, namely :—

(*a*) when rent is payable in respect of the tenure, a fee of two per centum on the annual rent of the tenure : provided that no such fee shall be less than one rupee or more than one hundred rupees ; and

(*b*) when rent is not payable in respect of the tenure, a fee of two rupees.

(3) When the registration of any such instrument is complete, the registering officer shall send to the Collector the landlord's fee and a notice of the transfer and registration in the prescribed form, and the Collector

shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

Transfer of permanent tenure by sale in execution of decree other than decree for rent.

13. (1) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, the Court shall, before confirming the sale under sec. 312 of the Code of Civil Procedure,* require the purchaser to pay into Court the landlord's fee prescribed by the last foregoing section, and such further fee for service of notice of the sale on the landlord as may be prescribed.

*XIV of 1882.

This is new.

(2) When the sale has been confirmed, the Court shall send to the Collector the landlord's fee and a notice of the sale in the prescribed form, and the Collector shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

Transfer of permanent tenure by sale in execution of decree for rent.

14. When a permanent tenure is transferred by sale in execution of a decree for arrears of rent due in respect thereof, the Court shall send to the Collector a notice of the sale in the prescribed form.

This is new.

Succession to permanent tenure.

15. When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the Collector in the prescribed form, and shall pay to the Collector the prescribed fee for the service of the notice on the landlord and the landlord's fee prescribed by sec. 12, and the Collector shall cause the landlord's fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

This is new.

The provisions of secs. 12 to 15 take the place of those of sec. 27, Act X of 1859, and sec. 26, Act VIII (B. C.) of 1869, which

provided that all dependent talukdars and other persons, possessing a permanent transferable interest in land, intermediate between the zemindar and cultivator, should register in the *sheristah* of the zemindar or superior tenant, to whom the rents of these taluks or tenures were payable, all transfers of such taluks or tenures, or portions of them, by sale, gift, or otherwise, as well as successions thereto and divisions among heirs in cases of inheritance, and that all zemindars or superior tenants should admit to registry and otherwise give effect to all such transfers, when made in good faith, and to all such successions and divisions. There are numerous rulings to the effect that transfers made without notice to, and unrecognized by, the landlord were invalid. (*Sarkies* v. *Kali Coomar Roy*, W. R., Sp. No., 1864, Act X, 98; *Huree Churn Bose* v. *Maharoonissa Bibee*, 7 W. R., 318; *Mritanjaya Sirkar* v. *Gopal Chandra Sircar*, 2 B. L. R., A. C., 131; *Kasheenath Punee* v. *Lukhmonee Pershad Patnaik*, 19 W. R., 99; *Sham Chand Koondoo* v. *Brojonath Pal Chowdhury*, 21 W. R., 94; *Wooma Churn Chatterjee* v. *Kadambinee Dabee*, 3 C. L. R., 146; *Panye Chunder Sircar* v. *Hemchunder Chowdhry*, I. L. R., 10 Calc., 496.)

The provisions of secs. 12 to 15 of this Act now provide a different system. They provide a system of *official* registry of the transfers of, and successions to, permanent tenures, under which the landlord is enabled, but not compelled, to register such transfers and successions, and under which, provided the provisions of the sections are complied with, his registration or non-registration is immaterial, the transfer or succession taking effect irrespective of his wish or pleasure. The system is briefly this. As regards voluntary transfers (sec. 12), every such transfer has to be registered under the ordinary law relating to the registry of assurances. The parties applying for registration are required to pay to the registering officer the landlord's fee (sec. 12, cl. 2), and a process fee for the service of notice on the landlord. When the registration has been completed, the registering officer forwards to the Collector the landlord's fee and a notice of the transfer containing all necessary particulars, and the Collector, thereupon, causes the landlord's fee to be paid to the landlord, and the notice to be served upon him, at the same time taking any such steps as may hereafter be prescribed for the entry of the transfer in the official registers. Similar provisions have been made in cases of sale for an ordinary decree (sec. 13) and of succession (sec. 15). In case of sale for arrears of rent (sec. 14), the Court holding the sale gives notice to the Collector, but there is no necessity for the latter to give notice to

the landlord, who has himself brought the tenure to sale, and there is, consequently, in this section no provision for service of notice on the landlord.

Forms of notices under secs. 12, 13, 14, and 15, and rules for service of notices under secs. 12, 13, and 15, have been prepared by the Local Government, and will be found in Appendix I.

16. A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit, distraint, or other proceeding any rent payable to him as the holder of the tenure, until the Collector has received the notice and fees referred to in the last foregoing section.

Bar to recovery of rent pending notice of succession.

This is new.

17. Subject to the provisions of section 88, the foregoing sections shall apply to the transfer of, or succession to, a share in a permanent tenure.

Transfer of, and succession to, share in permanent tenure.

This is new.

The provisions of sec. 88 simply reproduce the proviso to sec. 27, Act X of 1859, and sec. 26, Act VIII (B. C.) of 1869, to the effect that no division of a tenure or holding, or distribution of the rent payable in respect thereof, will be binding on the landlord, unless it is made with his consent in writing.

While provision is made in this chapter for the enhancement of a tenure-holder's rent, no corresponding provision is made for the abatement of his rent on the ground of the reduction of the area of his tenure by diluvion or otherwise. The omission is, however, merely an apparent one. The provisions of sec. 52, cl. (*b*), *post*, apply generally to all tenancies, and allow of a reduction of the rent on the ground of deficiency proved by measurement to exist in the area of a tenure or holding.

A further incident, which attaches to permanent tenures, is subsequently dealt with in sec. 179, in which it is said that nothing in this Act shall be deemed to prevent a proprietor or holder of a permanent tenure in a permanently settled area from granting a permanent *mokarari* lease on any terms agreed on between him and his tenant.

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

Incidents of holding at fixed rates.

18. A raiyat holding at a rent, or rate of rent, fixed in perpetuity—

(*a*) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure, and

(*b*) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

This is new.

Raiyats holding at fixed rates.

The effect of cl. (*a*) of this section is to place a raiyat holding at a rent, or rate of rent, fixed in perpetuity in substantially the same position as a permanent tenure-holder. The provisions of secs. 16 to 17 will, therefore, apply to a raiyat holding at a fixed rate of rent. It is to be noted that it is immaterial whether the raiyat has held at a fixed rate for a long or for a short period, and whether he is a "settled raiyat" or not. If a raiyat's rent is fixed in perpetuity, he at once acquires all the rights of a permanent tenure-holder with regard to the transfer of, and succession to, his holding.

He is also in the same position as a permanent tenure-holder as regards ejectment. He can only be ejected on the ground that he has broken a condition of his lease, for a breach of which he is expressly liable to be ejected, and a suit to eject him on this ground must be brought within a year from the date of the breach. (Art. 1, Sched. III of the Act, *post*.)

Guzastha tenures of Shahabad.

There is a kind of tenure current in the district of Shahabad, which is called a *guzastha* tenure. It has been considered by some that a *guzasthadar* is a raiyat holding at a fixed rate, whose rent cannot be enhanced (*Lal Sahoo v. Deo Narain Sing*, I. L. R., 3 Calc., 781; 2 C. L. R., 295). But this is doubtful. In another case it has been said, that "a *guzastha* tenure may or may not be a tenure at a

fixed rent" (*Juttoo Moar* v. *Mussamut Basmuttee Koer*, 15 W. R., 479; *Mussamat Tetra Kooer* v. *Bhunjun Roy*, 21 W. R., 268).

CHAPTER V.

OCCUPANCY-RAIYATS.

This chapter must be read with sec. 116, which provides that nothing in this chapter shall confer a right of occupancy in a proprietor's private or demesne lands, where any such land is held under a lease for a term of years, or under a lease from year to year,—that is to say, where the land is not held under a parol or implied contract of letting, or under a perpetual lease.

General.

19. Every raiyat who immediately before the commencement of this Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land shall, when this Act comes into force, have a right of occupancy in that land.

Continuance of existing occupancy-rights.

The saving of custom, enacted by this section, is in accordance with existing law; for, though it was formerly generally assumed that a raiyat could not acquire occupancy-rights, except under the provisions of Acts X of 1859 and VIII of 1869, B. C., this was not the case. Act X, it has been said, "did not take away the right of any raiyat who had a right by grant, contract, prescription, or other valid title to hold at a fixed rate of rent." (See *Ishur Ghose* v. *Hills*, W.R., Sp. No., F. B., 156; *Thakurani Dossee* v. *Bisheshur Mookerjee*, B. L. R., F. B., 326; 3 W. R., Act X, 29; *Rajah Leellanund Singh Bahadoor* v. *Nirput Mahtoon*, 17 W. R., 306.)

Occupancy-rights could be acquired by custom under the old law.

Under the provisions of sec. 6, Act X of 1859, and sec. 6, Act VIII of 1869, B. C., raiyats who, before the commencement of the Act, cultivated or held the same land for a period of twelve years, acquired rights of occupancy in that but in no other land, whether in the same village or not. The rulings of the High Court in interpreting the terms of these sections are very numerous. We reproduce here a few of them, showing (1) who acquired, and (2) who did not acquire, rights of occupancy under the old law. But it is to be remembered that these rulings relate only to agricultural land. As to the acquisition of rights of occupancy in building, homestead, pasture, and forest

land, and in fisheries, see the notes to sec. 3, cl. 3, and secs. 182 and 193.

Acquisition of rights of occupancy under the old law.

The following are rulings as to the acquisition of occupancy-rights:

(*a*) Tenants holding lands under *bye-howladari* tenures can acquire rights of occupancy (*Ruttonmoni Dabee* v. *Kamlakant Talukdar*, 12 W. R., 364).

(*b*) Tenants holding land under *bhagdari* or *bhaoli* tenures (*i. e.*, tenures in which a portion of the produce is paid as rent), can acquire rights of occupancy (*Hurihur Mookerjee* v. *Bireshor Bannerjee*, 6 W. R., Act X, 17; *Jutto Moar* v. *Basmuttee Koer*, 15 W. R., 479).

(*c*) *Utbandi* tenants, that is, tenants who hold from year to year and season to season such parcels of land as they choose to cultivate—the rent being regulated by an appraisement of the crop on the ground, and according to its character and to the area sown year by year—could acquire occupancy-rights (*Ramanond Ghose* v. *Shorendranath Roy*, 20 W. R., 329; *Hyder Buksh* v. *Bhoopendra Deb Coomar*, 15 W. R, 231). See sec. 180, *post*.

(*d*) Raiyats having *gorabandi* rights have rights of occupancy in their land (*Mohunt Chutterbhuj Bharti* v. *Janki Persad Sing*, 4 C. L. R., 298).

(*e*) Raiyats holding land for more than twelve years, but under several written leases or pottahs, each for a specific term of years, were entitled to claim rights of occupancy, unless there was an express stipulation to the contrary (*Pundit Sheo Prokash Misser* v. *Ram Sahoy Sing*, 8 B. L. R., 165; 17 W. R., 62).

(*f*) Members of a firm owning an indigo concern, and taking a *cultivating* lease of land, could acquire rights of occupancy in that land (*Laidley* v. *Gour Gobind Sirkar*, I. L. R., 11 Calc., 501).

(*g*) Raiyats might acquire rights of occupancy, even though the person to whom they paid rent had no title to the land (*Syed Ameer Hossein* v. *Sheo Suhae*, 19 W. R., 338; *Zoolfun Bibi* v. *Radhika Prosonno Chunder*, I. L. R., 3 Calc, 560; 3 C. L. R., 388).

(*h*) A raiyat who, instead of cultivating the land, set up shops on it and received profits from the shop-keepers, could acquire a right of occupancy (*Khujurunnissa Begum* v. *Ahmed Reja*, 11 W. R., 88).

(*i*) Raiyats could acquire rights of occupancy whether they cultivated the land with their own hands, or whether the cultivation was carried on at their risk and on their behalf by members of their families, by servants, or by hired laborers (*Ram Mongol Ghose* v. *Lakhinarain Shaha*, 1 W. R., 71; *Kali Churn Singh* v. *Ameeroodeen*, 9 W. R., 579).

(*j*) Non-payment of rent did not bar the acquisition of occupancy-rights (*Narain Roy* v. *Opnil Misser*, 11 C. L. R., 417; I. L. R., 9 Calc., 305), nor did it of itself involve a forfeiture of them (*Musyatoolla* v. *Noorzahan*, I. L. R., 9 Calc., 808; 12 C. L. R., 389).

(*k*) A right of occupancy could be acquired in respect of an undivided share of an estate (*Jardine Skinner & Co.* v. *Rani Surut Soondari Debi*, 3 C. L. R., 140. See also *Mooktakeshi Dasi* v. *Koylash Chunder Mitter*, 7 W. R., 493; *Guru Prosonno Roy* v. *Gobindo Persad Das*, 1 W. R., 34; *Kali Persad* v. *Shah Lutafut Hossein*, 12 W. R., 418; and *contra*, *Roghoobur Tewari* v. *Bishen Dutt*, 2 W. R., Act X, 92; and *Rani Shorot Sundari Debea* v. *Binny and others*, 25 W. R., 347).

Non-acquisition of occupancy-rights under the old law.

In the following cases it was held that occupancy-rights could not be acquired.

(*a*) A trespasser could not acquire a right of occupancy (*Sheikh Pir Buksh* v. *Sheikh Meahjan*, W. R., Sp. No., F. B., 146; *Gureeb Mundul* v. *Bhooban Mohun Sein*, 2 W. R., Act X., 85; *Golam Hyder* v. *Poorno Chunder Roy*, 3 W. R., Act X, 147; *Bhoobunjoy Acharjee* v. *Ramnarain Chowdry*, 9 W. R., 449; *Eshan Chunder Ghose* v. *Hurrish Chunder Bannerjee*, 10 B. L. R., App., 5; 18 W. R., 19).

(*b*) Possession in the capacity of a servant did not create the right (*Wooma Moyee Burmonya* v. *Bokoo Behara*, 13 W. R., 333).

(*c*) A person occupying as the assignee of a zemindar and cultivating, because of the opportunity thus afforded, could not acquire rights of occupancy (*Woomanath Tewaree* v. *Koondun Tewaree*, 19 W. R., 177).

(*d*) A firm of capitalists taking an *ijara* lease from a zemindar, and transmitting their rights to the changing members of the firm, could not acquire rights of occupancy (*Rai Komul Dassee* v. *Laidley*, I. L. R., 4 Calc., 957)

(*e*) A raiyat cultivating *nij-jote* land, belonging to a proprietor of an estate, acquired no right of occupancy, if the land was leased to him for a term of years, or year by year; but he did acquire a right of occupancy if it was not so leased to him (*Gour Hori Sing* v. *Behari Raut*, 3 B. L. R., App., 138; 12 W. R., 278; *Bhogwan Bhagut* v. *Jug Mohan Roy*, 20 W. R., 308; *Sheikh Ashraf* v. *Ram Kishore Ghose*, 23 W. R., 288).

(*f*) A raiyat setting up a title hostile to his landlord could not claim a right of occupancy, such an act amounting to a disclaimer and forfeiture of all his rights of occupancy (*Mirza Nadir Beg* v. *Muddarram*

2 W. R., Act X, 2; *Pandey Bissonath Roy* v. *Bhoirob Singh*, 7 W. R., 145; *Dabee Misser* v. *Mungur Meah*, 2 C. L. R., 208; *Satyabhama Dasi* v. *Krishna Chunder Chatterjee*, I. L. R., 6 Calc., 55; *Mozhuruddin* v. *Gobind Chunder Nundi*, I. L. R., 6 Calc., 436; *Ishan Chunder Chottopadhya* v. *Shama Churn Dutt*, I. L. R., 10 Calc., 41). But a defendant, whose pottah had been rejected, could still show that he had acquired a right of occupancy—*Bydnath Saha* v. *Jadav Chunder Saha*, 3 W. R., 208.)

(*g*) Occupation by a predecessor in title would not be such an occupation as would create in the holder of land any right of occupancy. Nor could the period during which the occupant of land was in possession as proprietor be included in considering whether he had acquired a right of occupancy. Such a right must be acquired against somebody, and could not be acquired by a man against himself (*Lal Bahadoor Singh* v. *Solano*, I. L. R., 10 Calc., 45; 12 C. L. R., 559; *Watson* v. *Shurutsoondari Debia*, 7 W. R., 395; *Tara Pershad Roy* v. *Soorjacant Acharjee Chowdry*, 15 W. R., 153; *Hyder Buksh* v. *Bhubendro Deb Koonwar*, 17 W. R., 179; *Narendra Narain Roy* v. *Ishan Chunder Sen*, 22 W. R., 23; *Khirod Chunder Roy* v. *D. M. Gordon*, 23 W. R., 237.)

(*h*) An *ijaradar* or farmer could not acquire a right of occupancy, but a right of occupancy once acquired would not be lost by subsequently holding the land in farm (*Gilmore* v. *Sreemunt Bhumik*, W. R., Sp. No., 1864, Act X, 77; *Watson & Co.* v. *Koer Jogendronarain Roy*, 1 W. R., 76; *Savi* v. *Panchanun Roy*, 25 W. R., 503; *Ram Sarun Sahoo* v. *Veryag Mahtoon*, 25 W. R., 554). This is now expressly made law by cl. 3 and the explanation to sec. 22 (*post*).

In the case of *Hurgobind Raha* v. *Ramrutno Dey*, I.L. R., 4 Calc., 67, it has been suggested that no rights of occupancy accrue in lands held under a service tenure. This, however, is an *obiter dictum*. But whatever the incidents of such tenure may be, they are not affected by the provisions of this Act (*vide* sec. 181, *post*).

Determination of occupancy-rights under the old law.

The following rulings relate to the determination of occupancy-rights:—

Such rights might be determined by quitting and abandoning the land, in which case there was nothing to prevent the zemindar from reletting the land and settling it with others (*Haro Das* v. *Gobind Bhuttacharjee*, 3 B. L. R., App., 123; 12 W. R., 304).

The relinquishment need not be in writing (*Moneeroodin* v. *Mahomed Ali*, 6 W. R., 67). But a raiyat did not lose his right, because he

could not produce a written lease (*Doorga Churn Mullick* v. *Bhoormon Manji*, 6 W. R., 195). A raiyat with a right of occupancy did not lose his right by subletting the land (*Kali Kishor Chatterjee* v. *Ram Churn Saha*, 9 W. R., 344; *Haran Chandra Pal* v. *Mukta Sundari Chowdhrani*, 10 W. R., 113; 1 B. L. R., A. C., 81; *Jamir Gazi* v. *Goneye Mundul*, 13 B. L. R., 278 note); nor by making an invalid transfer (*Suddye Purira* v. *Boistub Purira*, 3 W. R., 261; 12 B. L. R., 84 note; *Gorachand Mustafi* v. *Madan Mohon Sikdar*, 13 B. L. R., 279 note; *Kashinath Punee* v. *Lukhmonee Pershad Patnaik*, 19 W. R., 99); nor by subsequently taking the land in farm (*Watson & Co.* v. *Koer Jogendranarain Roy*, 1 W. R., 76).

A raiyat with a right of occupancy could also lose his right by non-payment of rent in the case of the submersion of the lands of his holding. Thus, in the case of *Hemnath Dutt* v. *Ashur Siddi* (I. L. R., 4 Calc., 894), in which lands, belonging to tenants with rights of occupancy, had been completely submerged for a number of years, and during the period of such submersion no rent was paid by the tenants, it was held, on the analogy of the Privy Council decision in *Lopez* v. *Muddan Mohun Thakur* (13 Moo. I. A., 467; S. C., 5 B. L. R., 521), that the tenants had forfeited their rights of occupancy.

BENGAL SECRETARIAT

20. (1) Every person who for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

Definition of "settled raiyat." Act X of 1859, s. 6; Act VIII of 1869, B. C., s. 6.

(2) A person shall be deemed for the purposes of this section to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.

This section makes a great change—perhaps the greatest change made by the Act—in the rent law hitherto current in Bengal. A raiyat no longer needs to hold the same particular land for twelve years in order to acquire a right of occupancy in it. It is sufficient, if he has

Acquisition of rights as a settled raiyat.

held as a raiyat any land in the same village for twelve years, either before or after the passing of the Act, and either himself or through the person whose heir he is. If he has done so, he then becomes "a settled raiyat." But this does not apply to *utbandi* raiyats, or to raiyats of *chur* or *dearah* lands (see sec. 180 for an explanation of these terms), who must hold the same land for twelve years before they acquire occupancy rights in it. Nor does it confer a right of occupancy on raiyats occupying proprietor's private or demesne lands, under leases for a term of years, or from year to year.

This provision, giving raiyats rights of occupancy, provided they have held any land in the village for twelve years, has been introduced to prevent zemindars from debarring their raiyats from acquiring rights of occupancy by shifting them, so as not to allow them to occupy the same land for the full period of twelve years. At one time it was proposed to allow a settled raiyat to acquire rights of occupancy in all lands held by him in an estate, provided he had held any land for twelve years in that "estate." But this proposal was finally, after much discussion, rejected.

(3) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

Distinction between a "settled raiyat" and an "occupancy-raiyat."

This clause is important, as it makes a distinction—the only distinction made by the Act—between a "settled raiyat" and "an occupancy-raiyat," which terms might appear to be synonymous. But they are not synonymous. By this clause the status of a "settled raiyat" is made heritable, though not transferable, and a raiyat in the acquisition of such a status is entitled to the benefit of the occupation of the person whose heir he is. But the status of a settled raiyat, whether inchoate or complete, cannot be acquired by purchase or sale, as rights of occupancy can, in districts where such rights are by custom transferable. On the contrary, the purchaser of a raiyat's right cannot, in the acquisition of rights of occupancy, benefit by the occupation of his predecessor, and the purchaser of an occupancy-raiyat's rights does not acquire rights of occupancy in lands other than those which he may have purchased,—that is to say, in other lands held by him, or which he may in future hold in the same village as a settled raiyat does. In this respect, the Act makes no change in the law. (See note (*g*) to sec. 19, *ante*.)

(4) Land held by two or more co-sharers as a raiyati holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

Co-sharer raiyats.

The co-sharers alluded to here are not co-sharer landlords, or co-sharers in an undivided estate. They are co-sharer raiyats, and the meaning of the clause would appear to be that, when two raiyats hold land jointly, they shall each be considered to be a raiyat of the holding, and may each become a "settled raiyat" of the village in which it is situate. Consequently, when a raiyat has held land for twelve years jointly with other co-raiyats, or partly jointly and partly solely, he, nevertheless, has acquired the status of a settled raiyat in the land. In this respect, the sub-section follows the High Court ruling in the case of *Forbes* v. *Ram Lall Biswas* (22 W. R., 51), and sets aside that in the case of *Sheikh Mohomed Chamon* v. *Ram Prasad Bhagat* (8 B. L. R., 3 8).

(5) A person shall continue to be a settled raiyat of a village as long as he holds any land as a raiyat in that village and for one year thereafter.

(6) If a raiyat recovers possession of land under section 87, he shall be deemed to have continued to be a settled raiyat, notwithstanding his having been out of possession more than a year.

Section 87 provides for the recovery of possession by a raiyat on proof that he has not voluntarily abandoned his holding. But if he has voluntarily abandoned his holding, and returns within a year and takes the same or another holding in the same village, he will, under cl. (5), still be a settled raiyat of the village.

(7) If, in any proceeding under this Act, it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a raiyat.

Onus of proof.

This clause makes another great change in the law. It relieves the raiyat of the onus of proving his occupancy-rights. It throws

on the landlord the onus of disproving the raiyat's claim to rights of occupancy. It has been inserted in the Act in consideration of the great practical difficulty experienced by raiyats in proving their occupancy-rights, owing to the general non-interchange of pottahs and kubuliyats under the previous law.

Settled raiyats to have occupancy-rights.

21. (1) Every person who is a settled raiyat of a village within the meaning of the last foregoing section shall have a right of occupancy in all land for the time being held by him as a raiyat in that village.

This is new.

(2) Every person who, being a settled raiyat of a village within the meaning of the last foregoing section, held land as a raiyat in that village at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force; but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act.

An occupancy-raiyat cannot contract himself out of his status.

March 2nd, 1883, is the date on which the motion was made in the Legislative Council for leave to introduce the Bengal Tenancy Bill. The object of the provision is to protect raiyats, who may have been induced, while this Act was passing through Council, to contract themselves out of its provisions. It is to be observed that this clause makes the provisions of sec. 20 retrospective from the 2nd March, 1883. They, therefore, take effect from the 2nd March 1871.

It is to be further noted that, under the provisions of sec. 178 (*post*), (1) nothing in any contract between a landlord and a tenant made before or after the passing of this Act shall (*a*) bar in perpetuity the acquisition of an occupancy-right in land, or (*b*) take away an occupancy-right in existence at the date of the contract; (2) nothing in any contract made between a landlord and a tenant since the 15th day of July, 1880, (which is the date of the Government orders, directing the publication of the Rent Law Commission's Report and Draft Bill), and before the passing of this Act, shall prevent a raiyat from acquiring, in accordance with

this Act, an occupancy-right in land; and (3) nothing in any contract made between a landlord and a tenant after the passing of this Act shall prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land; but it would appear that the object of these restrictions may be defeated owing to the provision in sub-section (7) of the preceding section, under which, in a proceeding under this Act, a raiyat may admit that he has not for twelve years held any part of his land as a raiyat, and if he does so, the Court or Revenue-officer before whom he makes this admission would appear to be bound to accept it as correct. In other words, the raiyat may admit he is not a settled raiyat, and his admission must be accepted, even though it be contrary to the real facts of the case.

Effect of acquisition of occupancy-right by landlord.

22. (1) When the immediate landlord of an occupancy-holding is a proprietor or permanent tenure-holder, and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession or otherwise, the occupancy-right shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

This is new.

(2) If the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, it shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

Merger.

These clauses introduce a rule of merger. The meaning of cl. (1) is, that if a landlord buys or otherwise comes into possession of an occupancy-right, the right shall be *de facto* extinguished. The land, however, continues part of the raiyati stock of the country, and the under-raiyats in it, if any, become elevated to the status of raiyats. Clause (2) lays down the same rule in the case of an occupancy-right coming into the possession of co-sharer landlord or permanent tenure-holder.

(3) A person holding land as an ijárádár or farmer of rents shall not, while so holding, acquire a right

of occupancy in any land comprised in his ijárá or farm.

Explanation.—A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as proprietor or permanent tenure-holder, or by subsequently holding the land in ijárá or farm.

This clause and the explanation to it embody the law laid down by the High Court in the cases of *Gilmore* v. *Sreemunt Bhumik*, W. R., Sp. No., 1864, Act X, 77; *Watson & Co.* v. *Koer Jogendro Narain Roy*, 1 W. R., 76; *Mokondo Lall Doobey* v. *Crowdy*, 17 W. R., 274; *Savi* v. *Punchanun Roy*, 25 W. R., 503; *Ram Sarun Sahoo* v. *Veryag Mahton*, 25 W. R., 554; *Jardine Skinner & Co.* v. *Rani Surut Sundari Debi*, 3 C. L. R., 140; *Rai Komol Dassee* v. *Laidley*, 4 Calc., 957; *Lal Bahadur Singh* v. *Solano*, I. L. R., 10 Calc., 45; 12 C. L. R., 559.

The effect of the provisions of this section appears to be that a proprietor, or permanent tenure-holder, or a joint proprietor, or joint permanent tenure-holder, or an *ijárádár*, or farmer of rents, cannot acquire a right of occupancy, but a person who has a right of occupancy does not lose it by subsequently becoming permanent tenure-holder, or joint proprietor, or joint permanent tenure-holder, or *ijárádár* with respect to the same land.

Incidents of occupancy-right.

Rights of raiyat in respect of use of land.

23. When a raiyat has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy; but shall not be entitled to cut down trees in contravention of any local custom.

This is new.

Hitherto, a raiyat has been debarred from cutting trees (*Sheikh Abdul Rahman* v. *Dataram Bashi*, W. R., Sp. No., 1864, 267); digging tanks (*Tarini Churn Bose* v. *Deb Narain Mistree*, 8 B. L. R., App., 69; *Monindro Chandra Sircar* v. *Moniruddin Biswas*, 11 B. L. R., App., 40); erecting brick houses (*Sibdass Bandopadya* v. *Bamandass*

Mookerjee, 8 B. L. R., 237; S. C., 15 W. R, 360; *Jugut Chunder Roy Chowdry* v. *Eshan Chunder Banerjee*, 24 W. R., 220; *Prosonno Coomaree Dabea* v. *Sheikh Rutton Bepary*, I. L. R., 3 Calc., 696; *Baboo Lall Sahoo* v. *Deo Narain Singh*, I. L. R., 3 Calc., 781; 2 C. L. R., 295; but see *contra Nyamatoolla Ostagar* v. *Gobind Chunder Dutt*, 6 W. R., Act X, 40); excavating earth for making bricks (*Kadambini Debi* v. *Nobin Chunder Adulh*, 2 W. R., 157; *Anand Kumar Mookerjee* v. *Bissonath Bannerjee*, 17 W. R., 416); and even, according to the North-West Provinces High Court, from digging wells or planting trees on his land (*Koonj Behari Pátak* v. *Shiva Baluk Sing*, 1 Agra, F. B., 119; *Jewa Ram* v. *Futteh Singh*, 1 Agra, F. B., 125; *Sheochurn* v. *Bassant Sing* and *Ram Julbun Singh* v. *Munshi Meheli*, 3 All. Rep., 282), without his landlord's consent. If, however, the landlord had stood by and allowed the tenant to erect brick-houses (*Bani Madhab Bannerjee* v. *Joy Krishna Mookerjee*, 7 B. L. R., 152; S. C., 12 W. R., 495; *Braja Nath Kundu Chowdry* v. *Stewart*, 8 B. L. R., App., 51; *Durga Persad Misser* v. *Brindaban Sukul*, 7 B. L. R., 159); or acquiesced in the excavation of earth for brick-making (*Peter Nicholl* v. *Turini Churn Bose*, 23 W. R., 298), the Courts would not allow him to eject the tenant, at least without giving him compensation. In another case, in which the tenant had planted his jote with mango trees to the knowledge, but without the consent, of his landlord, who took no action in the matter for three years, it was held that the landlord was not entitled to a mandatory injunction for the removal of the mango trees (*Noyna Misser* v. *Rupikun*, I. L. R., 9 Calc., 609). Now, however, by Chap. IX of the Act, the law is changed. A raiyat holding at fixed rates and an occupancy-raiyat may (sec. 76) dig a well, tank, water channel, make an enclosure or other permanent improvement of land for agricultural purposes, and erect a suitable dwelling and out-offices, with or without his landlord's consent. A non-occupancy raiyat may (sec. 79) dig a well and construct a dwelling-house on his land with or without his landlord's consent. But a tenant may not now, without his landlord's consent, dig earth from it for purposes of brick-making, or do anything else, which will permanently impair the value of the land and render it unfit for the purposes of cultivation. Further, a raiyat may cut down the trees on his land without his landlord's consent, unless there be a custom to the contrary in his district. The landlord's remedy in the case of a raiyat's materially impairing the value of the land would be a suit for damages, or for the restoration of the land

to its former condition. He might also obtain an injunction against the raiyat, restraining him from doing further injury to the land. He cannot eject the raiyat on this ground. Nor can he eject the raiyat for cutting down the trees in contravention of a local custom. His remedy in this case would be a suit for damages, or an injunction. But the landlord may eject the raiyat, if he renders the land unfit for the purposes of the tenancy, though, before doing so, he will, under the provisions of sec. 155, have to serve on the raiyat a notice specifying the particular misuse complained of, and requiring him to remedy and pay compensation for the same.

Under sec. 178, cl. 3 (*b*), an occupancy-raiyat cannot, after the passing of this Act, contract himself out of the provisions of this section.

Obligation of raiyat to pay rent

24. An occupancy-raiyat shall pay rent for his holding at fair and equitable rates.

Meaning of "fair and equitable rates."

The expression "fair and equitable rates" is not defined either in this Act or in Act X of 1859, or in any other Act of the Indian Legislature. Its meaning may be gathered from sec. 27 read with secs. 30 and 38. The existing rent is, under sec. 27, to be presumed to be fair, until the contrary is proved. Proof of the contrary would be proof of existence of the grounds of enhancement specified in secs. 30 to 34, or of the grounds of reduction mentioned in sec. 38. The presumption in favor of the existing rent being the fair and equitable rent may be rebutted by shewing (*a*) that the average prices of staple food crops have risen during the currency of the present rent, that the rent paid by the raiyat is below the prevailing rate, or that the productive powers of the land have increased by an improvement effected by the landlord, in which cases the existing rent must be enhanced in order to arrive at a "fair and equitable" rent; or (*b*) that there has been a fall in the average prices of staple food crops during the currency of the present rent, or that the soil has become deteriorated by a deposit of sand or the like (sec. 38), in which latter cases the existing rent would have to be reduced in order to arrive at a fair and equitable rent, within the meaning of the Act. It would therefore appear that fair and equitable rent under the Act, in the case of occupancy-raiyats, means the existing rent, *plus* or *minus* a rise or fall, as the case may be, on the grounds specified above. It may be worth while to point out that, in practice, the

"fair and equitable rent" under this Act must, in the vast majority of cases, ordinarily, *be either the existing rent, be it ever so high, or that rent together with an enhancement of it.* It is known that prices have risen, and that their tendency is to rise further. Hence, on the ground of rise in prices, existing rents must be enhanced, and cannot be reduced, in order to arrive at fair rents. Again, the rents of occupancy-raiyats, who are paying at less than prevailing rates, can be enhanced to prevailing rates, while the rents of raiyats who are paying at more than prevailing rates cannot be reduced to those rates. On this ground, then, so far as existing rents are changed at all, in order to get at fair rents, the change must be in the direction of enhancement, and cannot be in the direction of reduction. There is no class of cases likely to arise in actual practice, in which an occupancy raiyat's rent can be reduced, in settling fair and equitable rents, except the few cases in which the soil may have deteriorated by a deposit of sand, or the like. The provisions of this section would, therefore, be likely to prove disastrous to the raiyat, were it not for the provisions of a subsequent section, *viz.*, sec. 35, in which it is said that, "notwithstanding anything in the foregoing sections, the Court shall not, in any case, decree any enhancement which is, under the circumstances, unfair and inequitable." But see the note to that section.

Protection from eviction except on specified grounds.

25. An occupancy-raiyat shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground—

(*a*) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or

(*b*) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

This is new.

This section must be read in connection with sec. 155, which provides that, before bringing a suit for ejectment against a tenant on either of the grounds specified in this section, the landlord must serve on the tenant a notice specifying the particular misuse, or breach,

complained of, and giving the tenant the option of either remedying the misuse or breach, or paying reasonable compensation for the same. The tenant is only liable to ejectment, if he has failed within a reasonable time to comply with the terms of this notice.

A raiyat cannot, therefore, be ejected for merely materially impairing the value of the land. The landlord's remedy in this case would be a suit for damages, or for the restoration of the land to its former condition, and he might also obtain an injunction against the tenant, restraining him from doing further injury to the land. He would also have these remedies against a tenant, who had rendered the land unfit for the purposes of the tenancy, or had broken a condition of his lease, and might have recourse to them without serving a notice on the tenant, or suing for his ejectment.

Danger of landlord's sleeping on his rights.

But it is always dangerous for a landlord to sleep on his rights. Under the old law, the Courts have frequently refused the relief of ejectment to landlords, who have done so, and have stood by and allowed tenants to invest labour and capital in the land without taking any action (*Bani Madhub Bannerjee* v. *Joy Krishna Mookerjee*, 7 B. L. R., 153; 12 W. R., 495; *Brojanath Kundu Chowdhri* v. *Stewart*, 8 B. L. R., App., 51; 16 W. R., 216; *Durga Persad Misser* v. *Brindabun Sukul*, 7 B. L. R., 159; *Mussamut Rani Rama* v. *Sheikh Jan Mahomed*, 3 B. L. R., A. C., 18; *Peter Nichol* v. *Tarini Churn Bose*, 23 W. R., 298; *Noyna Misser* v. *Rupikun*, I. L. R., 9 Calc., 609; 12 C. L. R., 300.)

Devolution of occupancy-right on death.

26. If a raiyat dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immoveable property: provided that, in any case in which under the law of inheritance to which the raiyat is subject his other property goes to the Crown, his right of occupancy shall be extinguished.

This is new.

This sets at rest the question of the heritability of occupancy-rights. It was generally assumed that occupancy-rights were heritable, but doubts on this point were expressed by Peacock, C. J., in the case of *Ajodhya Pershad* v. *Imam Bandi Begum* (7 W. R., 528), and the question seems never to have been decided.

Transferability or non-transferability of occupancy-rights.

It is to be noticed that the above sections, dealing with the incidents of occupancy-rights, omit all reference to the incident of their transferability or non-transferability. The omission is intentional. It was at first proposed to make all occupancy-rights transferable. Subsequently, it was proposed to make occupancy-rights in Bengal transferable, and to leave the transferability of occupancy-rights in Behar to be regulated by custom. Ultimately, it was determined to leave the question of transferability of all occupancy-rights, whether in Bengal or Behar, to be settled by custom as before, and the Act, therefore, omits all reference to the subject, leaving the matter to be regulated by sec. 183, which provides that "nothing in this Act shall affect any custom, usage, or customary right, not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions." The application of this section to the question of transferability of occupancy-rights is specially pointed out by illustration 1, appended to sec. 183, which runs thus: "A usage, under which a raiyat is entitled to sell his holding without the consent of his landlord, is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That usage, accordingly, wherever it may exist, will not be affected by this Act."

Occupancy-rights not transferable, save by custom.

That rights of occupancy are not necessarily, that is, save by custom, transferable, was settled by the Full Bench ruling of *Ajodhya Pershad* v. *Imam Bandi Begum*, 7 W. R., 528. This ruling has been followed ever since. (See *Ranee Durga Sundari* v. *Brindabun Chunder Sircar*, 2 B. L. R., App., [illegible]; 11 W. R., 162; *Nunkoo Roy* v. *Mahabeer Pershad*, 11 W. R., 405; 3 B. L. R., App., 35; *Narendro Narain Roy Chowdhry* v. *Ishan Chunder Sen*, 13 B. L. R., 274; 22 W. R., 22.) In order to make a right of occupancy transferable, it has been said, it must be shown, that it is so transferable according to the custom of that part of the country in which the tenure is situated (*Unno Poorna Dassia* v. *Umachurn Das*, 18 W. R., 55; *Mussamut Shunkerpatti Thakurani* v. *Mirza Saifollah Khan*, 18 W. R., 507), and in a recent case (*Dwarkanath Misser* v. *Hurrish Chunder*, I. L. R., 4 Calc., 925) it has been held that, in the absence of clear and well-defined custom, the right of occupancy acquired by a cultivating raiyat under sec. 6 of Bengal Act VIII of 1869 cannot be transferred either by a voluntary sale, or gift, or sale in execution of a decree. It may be here noted that, with regard to *gorabandi* tenures, it has been ruled that they are not more extensive than occupancy-rights, and are not necessarily transferable

(*Mohunt Chutterbhuj Bharti* v. *Janki Persad Singh*. 4 C. L. R., 298). But a right of occupancy may be transferred with the consent of the zemindar (*Hurro Chunder Guho* v. *Dunn*, 5 W. R., Act X, 55).

A zemindar does not, however, by mere receipt of rent from a purchaser from a tenant having a right of occupancy, sanction the sale to the purchaser, so as to give him a right of occupancy (*Gour Lal Sircar* v. *Rameswar Bhumik*, 6 B. L. R., App., 92 ; *Khooderam Chutterji* v. *Rookhinee Boistobee*, 15 W. R., 197) ; and when an occupancy right was transferred by execution-sale, and the purchaser allowed the raiyats to remain on as tenants-at-will, it was held that he had not waived his right of entry on the land (*Dwarkanath Misser* v. *Hurrish Chunder*, I. L. R., 4 Calc., 925).

The fact of a landlord bringing a holding to sale in execution of his own decree is not evidence of a right to transfer without his own consent (*Bibi Sahodwa* v. *Smith*, 12 B. L. R., 89 ; 20 W. R., 139). The mere transfer of a right of occupancy does not work as a forfeiture of the rights and interests of occupancy rights in the lands (*Gora Chand Moostafee* v. *Baroda Persad Moostafee*, 11 W. R., 94 ; *Gora Chand Moostafee* v. *Modon Mohon Shikdar*, 13 B. L. R., 279 note ; *Dwarkanath Misser* v. *Kanay Sirdar*, 16 W. R., 111 ; *Kashinath Punee* v. *Lukhimoni Pershad Patnaik*, 19 W. R., 99). But the rent must continue to be paid by the recorded tenant, or his heirs, and not by a stranger (*Joy Kishun Mookerjee* v. *Raj Kishun Mookerjee*, 5 W. R., 147 ; *Suddye Purira* v. *Boistob Purira*, 12 B. L. R, 84 note). The transferee acquires no rights against the landlord, and may be treated as a trespasser (*Bibi Sahodwa* v. *Smith*, 12 B. L. R., 89 ; 20 W. R., 139 ; *Hurro Mohon Mookerjee* v. *Chintamoni Roy*, 2 W. R., Act X, 19 ; *Norendro Narain Roy* v. *Ishan Chunder Sen*, 13 B. L. R., 274 ; 22 W. R., 23). When a raiyat's holding is transferable, it is not necessary that the transfer should be registered in the landlord's serishta. This was only required by the old law in the case of dependent talukdars and holders of permanent tenures, intermediate between the zemindar and the cultivator (*Mussamat Taramani Dasi* v. *Biressur Majumdar*, 1 W. R., 86 ; *Hurro Mohon Mookerjee* v. *Chintamoni Roy*, 2 W. R., Act X, 19 ; *Wooma Churn Sett* v. *Hari Persad Misser*, 10 W. R., 201 ; *Joy Kissen Mookerjee* v. *Doorga Narain Nag*, 11 W. R., 348.)

Occupancy-rights transferable by custom.

That occupancy rights are transferable by custom is now a well-established fact. There are numerous judicial rulings to this effect. One of the earliest of these is the case of *Joy Kissen Mookerjee*

(11 W. R., 153), in which it is said that, "in every district of Bengal, there is a different custom. In some parts the *khoodkasht* tenants are allowed to sell without reference to their landlords, in other parts the practice has not been allowed, and the only method by which the question in each case can be decided is by reference to local custom." Then in *Hurro Mohon Mookerjee* v. *Ranee Lalunmonee Dassi* (1 W. R., 5) it was said, that "it is not essential that a raiyat should have a *mokarari jote* in order to dispose of his rights in a holding. There are various descriptions of tenures, other than *mokarari*, that can be sold, and are sold every day; the howalahs and neem howalahs of Backergunge, and the jotes of Rungpore, for example. Neither of these holdings are properly speaking *mokarari*, but they are *maurasi* and contain hereditary rights, which are, and always have been considered, transferable;" and in *Jaggot Chunder Roy* v. *Ram Narain Bhuttacharjee* (1 W. R., 126) it was said that, "neem howalahs, and all such rights of occupancy, established by the ancient prescription and custom of the country, are transferable tenures." Then, in *Chunder Coomar Roy* v. *Kaderponi Dasi*, 7 W. R, 247, a custom according to which rights of occupancy in land, on which a brick-house had been built, were transferable was held to have been proved; and in *Beni Madhub Banerjea* v. *Joy Kissen Mookerjea* (7 B. L. R., 152; 12 W R, 495) it was found that, according to the custom of the Hooghly District, a tenure granted for building purposes is transferable. In a recent case (*Tirthanund Thakur* v. *Mutty Lal Misser*, I. L. R., 3 Calc., 774) the High Court has pointed out that a portion of an occupancy holding cannot be transferred. In this case it was found, that occupancy-raiyats had, by the custom of the locality, a right in a certain locality to transfer their rights generally, but not to subdivide their holdings and to transfer different parts of them to different people, and it was held that the persons who took the different parts of the holdings could be treated as trespassers and ejected.

Prevalence of custom of transferability.

It has, however, been contended by some that occupancy-rights are much more generally transferable than these judicial rulings would seem to show. It is said that the custom of transferring them prevails, not merely in certain particular localities, but all over Bengal. In the Bengal Government Report of 1883 on the Bengal Tenancy Bill, Vol. I, p. 14, statistics were given as to the sales of occupancy-rights in Bengal in 1881-82. It was shown that there had been 32,633 such sales in that year, and it was said that in every district of Bengal and Behar, except Darjeeling, occupancy-rights were "more or less freely

sold, as a matter of private agreement, without objection on the landlord's part." It was contended, however, that the sales, of which the Government of Bengal produced statistics, were dependent on the landlord's consent. Further enquiries were, therefore, made, and their results are embodied in the appendices to the Government of Bengal Report of 1884 on the Tenancy Bill. The result of them is, according to the Government Report of that year, Vol. I, p. 18, that "wherever, throughout these provinces, the custom of free sale is well established, there, occupancy-rights are bought and sold without interference on the part of the zemindar. The utmost extent to which interference proceeds is the levy of a fee, when the purchaser's name is registered (which it often is not) in the landlord's *serishta*."

How is custom of transferability to be proved?

A most difficult point in connection with this question, however, remains, that is, how is the custom of the transferability of occupancy-rights in any particular locality to be proved to the satisfaction of a Court, with how many years' proof of the existence of such a custom should the Court be satisfied, and would be justified in finding the custom to be well established? On this point, reference is invited to the notes to sec. 183, in which the subjects of custom, usage, and customary right are discussed.

It is to be noted that, under the provisions of cl. (*d*), sub-sec. (3), sec. 178 (*post*) of this Act, no raiyat can, after the passing of this Act, contract himself out of his right to transfer or bequeath his holding in accordance with local usage.

Subletting.

Besides omitting to notice the question of transferability of occupancy-rights, this chapter is also silent as to an occupancy-raiyat's right of subletting. This subject is, however, dealt with in sec. 85, on reference to which it will be seen that *any* raiyat may sublet his land, (*a*) if without the consent of his landlord, by means of a registered lease, which shall be valid for only nine years, whether registered before or after the passing of the Act, or (*b*) with the consent of his landlord, in any way he pleases, and for any term not exceeding the term of his own holding, if he holds it on a terminable lease.

Enhancement of Rent.

Presumption as to fair and equitable rent.

27. The rent for the time being payable by an occupancy-raiyat shall be presumed to be fair and equitable until the contrary is proved.

28. Where an occupancy-raiyat pays his rent in money, his rent shall not be enhanced except as provided by this Act.

Restriction on enhancement of money-rents.

This is new.

The effect of this section is, that enhancement, except by suit or by contract, is absolutely prohibited, and that, if by contract, the contract must be written and registered, save as provided in the proviso 1, sec. 29 (*post*). From the omission of all reference in this, and in subsequent sections, to the enhancement of rent payable in kind, it would at first seem as if a rent payable in kind, or, in other words, as if the rent of a *bhaoli* holding, could not be enhanced. This is to a certain extent true. A rent payable in kind, or a *bhaoli* rent, cannot be enhanced, as long as it remains payable as such. But either a landlord or an occupancy-raiyat can always, under sec. 40, apply to have a rent payable in kind commuted into a money-rent, and if the commutation is allowed, the landlord can proceed to enhance the commuted money-rent in accordance with the Act.

Enhancement of rent payable in kind.

The fact of a raiyat having paid rent in kind for a number of years is no bar to enhancement (*Thakoor Pershad* v. *Nowab Syad Mohomed Baker*, 8 W. R., 170).

29. The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions :—

Enhancement of rent by contract.

(*a*) the contract must be in writing and registered ;

(*b*) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat ;

(*c*) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract :

Provided as follows—

(i) Nothing in clause (*a*) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

(ii) Nothing in clause (*b*) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

(iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (*b*) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

This is new.

Agreements to enhance must be in writing, and must be registered, and the enhanced rent must not exceed the rent previously paid by more than twelve and-a-half per cent., but if, as in the case of proviso (i), a raiyat actually pays an enhanced rent of more than twelve and-a-half per cent. above his former rent, for not less than three years, under an oral or written but unregistered contract, he cannot say that he was unaware of the nature of the contract he was entering into. He is therefore to be held liable for the enhanced rent. Again, when a raiyat, as in the case of proviso (ii), agrees to pay an enhanced rent, in consideration of an improvement effected by his landlord, he is paying not so much an enhanced rent, as interest on the capital invested by the landlord. He is, therefore, liable to pay at an enhanced rate

even exceeding his former rent by more than twelve and-a-half per cent., but only so long as the improvement lasts and produces its estimated effect. Finally, proviso (iii) is intended to permit of the unrestricted enhancement of the rents of raiyats, who may have agreed to sow indigo or other special crops in consideration of their being allowed to hold at specially low rates.

30. The landlord of a holding held at a money-rent by an occupancy-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds, namely :— Enhancement of rent by suit.

(*a*) that the rate of rent paid by the raiyat is below the prevailing rate paid by occupancy-raiyats for land of a similar description and with similar advantages in the same village, and that there is no sufficient reason for his holding at so low a rate ; Act X of 1859, s. 17; Act VIII of 1869 (B. C.), s. 18, cl. 1.

(*b*) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent ;

This is new.

(*c*) that the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord during the currency of the present rent ; Act X of 1859 s. 17; Act VIII of 1869 (B. C.), s. 18, cl. 2.

(*d*) that the productive powers of the land held by the raiyat have been increased by fluvial action.

This is new.

Explanation.—"Fluvial action" includes a change in the course of a river rendering irrigation from the river practicable when it was not previously practicable.

"*Institute a suit to enhance.*"—This section makes a great change in the law with regard to enhancement suits. The provisions of sec. 13, Act X of 1859, and sec. 14, Act VIII of 1869 (B. C.), have been done away with, and the issue of a notice of enhancement is no longer a necessary preliminary to the enhancement of an occupancy-raiyat's rent, or indeed to the enhancement of the rent of any tenant. The reason for this change is that a very large percentage of enhancement cases under the old law failed, (1) because of absence of proof of the service of the notice of enhancement, and (2) because of defects in the form of notice, which merely delayed and impeded the decision of the real question at issue between the parties, and at the same time gave rise to much unnecessary litigation.) Under the present law the institution of the enhancement suit will be the notice of enhancement to the tenant. This will not bear hardly on the tenant, for, under sec. 154, a decree for enhancement, if passed in a suit instituted within the first eight months of the agricultural year, shall not ordinarily take effect till the commencement of the agricultural year next following; and, if passed in a suit instituted within the last four months of the agricultural year, shall not ordinarily take effect till the commencement of the agricultural year next but one following. But the Court may, for special reasons, fix a later date from which any such decree shall take effect.

Notices of enhancement no longer required.

Clause (*a*). The ground of enhancement specified in this clause is the same as the first ground mentioned in sec. 18, Act VIII of 1869, modified to the extent that "village" is substituted for "in the places adjacent," and that the words "and that there is no sufficient ground for his holding at so low a rate" have been added. As to the meaning of the term "prevailing rate," it has been held by the High Court that it means the rate generally prevalent, or paid by the *majority* of the raiyats in the same neighbourhood. "The evidence of twenty raiyats," it has been said, simply showing that they paid "their rents at a certain rate does not go to prove the prevailing rate, or the rate paid by the majority of the raiyats" (*Shadoo Sing* v. *Ramanugraha Lal*, 9 W. R., 83). Again, in the case of *Dhunraj Koonwar* v. *Ooggar Narain Koonwar* (15 W. R., 2), it was said that the meaning of the term "prevailing rate" is the rate paid by so large a majority of the same class of tenants for adjacent lands with similar advantages, as would justify one in holding it to be the prevailing rate. In one case, *Priag Lall* v. *Brockman* (13 W. R., 346), the evidence of three *putwarees*, who put in their *jamabandees*, showing the rates paid by

Prevailing rate.

almost all the raiyats, was held sufficient to prove the prevailing rate. In *Tikaram Singh* v. *Sandes* (22 W. R., 335), where the Lower Appellate Court went on the principle that, although the plaintiff had not given evidence as to the rate of rent payable by tenants of the same class as defendants, holding adjacent lands of similar quality, yet he had given evidence as to such lands so occupied of a somewhat better quality, and that the rate of rent allowed, regard being had to the difference, was proper to award in conformity with the spirit of the rent-law, the decision was held to be reasonable, and was accordingly affirmed.

It is, however, doubtful, whether these rulings are now applicable, for rules have now been laid down (sec. 31, *post*) for determining what is the prevailing rate. (See the note to sec. 31, which must be read in connection with this ground of enhancement.)

"*And that there is no sufficient reason for his holding at so low a rate.*" These words introduce a new element of consideration. A sufficient reason for the tenant's holding at a low rate may be, it is said, that he belongs to a superior caste, the members of which are, by custom, allowed to hold land at a lower rate than members of other castes, or that he or his ancestors originally reclaimed the land, and made it culturable by his own labor or at his own expense (*Hurro Persad Roy* v. *Chundi Churn Byragee*, I. L. R., 9 Calc, 505; 12 C. L. R, 251.)

Rise in prices.

Clause (*b*). This clause, it is to be observed, authorizes an enhancement of rent only on the ground of a rise in the average prices of the staple food-crops, irrespective of the particular crop—such as jute, indigo, opium, and *ganja*—grown by the raiyat. The raiyat can grow what crop suits him best, without thereby subjecting himself to pay enhanced rent.

A rise in prices can be more easily proved than a rise in the value of the produce, which, under the old rule, it was necessary to prove. Under this Act (sec. 39) Government is bound to prepare price lists of the staple food-crops, which are made presumptive evidence of the correctness of the prices mentioned in them.

Increase in productive powers of lands.

Clause (*c*). In sec. 18, Act VIII of 1869 (B. C.), the raiyat's rent was enhanceable on the ground that the productive powers of the land had been increased otherwise than by the agency or at the expense of the raiyat. The terms of the present section show that a raiyat's rent is no longer enhanceable on the ground of an increase in the productiveness of the soil, due to natural agency other than fluvial action.

This ground of enhancement is said to have been given up, owing to the difficulty found in proving such an increase. But the alteration made in favor of the raiyat would seem to be more apparent than real, for it is not easy to see how the productive powers of the land can have increased otherwise than by fluvial action, except by the labor or at the expense of the raiyat or landlord. Provision is hereafter made (Chap. IX) for the making, registering, and recording evidence of improvements made by the landlord.

Fluvial action.

Clause (*d*) provides for the enhancement of rent in alluvial tracts, which are fertilized by alluvial deposits brought down by the great rivers which water Bengal. It is not by this clause intended, it is said in the Government of Bengal Report of 1884 on the Tenancy Bill (Vol. I, p. 24), to "justify claims for enhancement over such areas as are not riparian or alluvial, but still are inundated in years of heavy rainfall, when rivers overflow their channels, or burst through their embankments."

It may be here mentioned that a tenant is also liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, but this is strictly not an enhancement of rent. The matter is therefore dealt with in a subsequent section. (Sec. 52, *post.*)

Rules as to enhancement on ground of prevailing rate.

31. Where an enhancement is claimed on the ground that the rate of rent paid is below the prevailing rate—

(*a*) in determining what is the prevailing rate the Court shall have regard to the rates generally paid during a period of not less than three years before the institution of the suit, and shall not decree an enhancement unless there is a substantial difference between the rate paid by the raiyat and the prevailing rate found by the Court;

(*b*) if in the opinion of the Court the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize

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in that behalf by rules made under section 392 of the said Code;

(*c*) in determining under this section the rate of rent payable by a raiyat his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account in determining the rate; and whenever it is found that by local custom any description of raiyats hold land at favourable rates of rent, the rate shall be determined in accordance with that custom;

(*d*) in ascertaining the prevailing rate of rent the amount of any enhancement authorized on account of a landlord's improvement shall not be taken into consideration.

This is new.

Effect of expression "have regard to."

As regards the expression "*have regard to*" used in this and other sections, the Honorable Mr. Evans remarked, in the course of the debates on the Bill, "that every lawyer knows that if, into a definition of the ground on which an enhancement is to take place, you incorporate a number of things, which the Courts may have regard to, you make those things so positively a part of the definition, that, in an appeal on a point of law to the High Court, if the whole of the matters contained in the definition have not actually been found on evidence, the case will fall to the ground." "I fear," he adds, "it will be exceedingly difficult for a Court to conduct an investigation in this way, and that there will hardly be a case, which will not be capable of being upset on appeal to the High Court" (*Government of India Gazette*, 1885, p. 523).

Working of rules for ascertaining prevailing rate.

It is difficult to predict how the rules laid down in this section will work. According to some authorities the effect of the direction given to the Courts in sec. 31, cl. (*a*), "to have regard to the rates generally paid during a period of not less than three years before the institution of the suit," will be that the Courts will ascertain the prevailing rate by taking an average of the existing rates—a principle which was said, in the case of *Sumeera Khatoon* v. *Baboo Gopal Lall Thakur* (1 W. R., 58), to be an incorrect and unsafe, and in *Audh Beharee Singh* v. *Dost Mahomed* (22 W. R., 185), to be a wrong mode of fixing the proper rate; and which, it is further said,

if once introduced, will have the effect of levelling all rates up to the maximum.

According to others, the rulings of the High Court, which prohibit the striking of an average, except in special cases, will apply under this Act as well as under the old law.

If the prevailing rate is not to be an average of the rates actually paid, it would appear to be the rate paid by a majority of the raiyats for the same class of land, as under the old law, or if not this, it is not easy to say exactly what it is.

The Honorable Mr. Evans, in the course of the debates on this section, illustrated the manner in which he conceived the section will work as follows :—" Say, there are two rates, one of Rs. 5 and one of Rs. 2. Merely to strike an average will not be in compliance either with this Act or the old law. But the class of judgments, which I have more than once referred to, in which the Judge says,—'this man has been holding at one rupee, the claim is to have his rent enhanced up to rupees two, on the ground of prevailing rate, and there is a great deal of contradictory evidence as to what the prevailing rate is. I doubt the evidence which makes it Rs. 2, but I find, except in isolated cases, land of this description is never held under Rs. 1-8; therefore, I shall be safe in finding that the prevailing rate is not less than Rs. 1-8'—that is the sort of way in which the Courts have frequently given judgments in regard to these discrepant matters, and I think rightly so."

The above is a statement of the probable interpretation of the prevailing-rate sections as given by those who alleged, on the one hand, that there is no such thing as a prevailing rate, and that the directions in the Act for the determination or finding of one would only lead to the striking of averages and manufacture of fictitious rates, and the statement of the case by those who, on the other hand, advocated the retention of this ground of enhancement. We offer no opinion as to which is right, but would merely remark that the question for the Court being "how is it to determine what is meant by a prevailing rate? is it the rate paid by a majority of the raiyats, or, if not, what is it?" the difficulty can hardly be met by an answer, which assumes that the Court has already found the prevailing rate, which it is searching for, to be never less than so and so. Under the North-West Provinces Rent Act, XVII of 1873, the "prevailing rate" is one of the grounds of enhancement; but there the "prevailing rate is determined by taking an average rate paid for each class

of land of similar quality with similar advantages, after deducting the fields which pay an abnormally low rate" (Notification 1420A, dated 17th July, 1875), and the result is described to have been disastrous to the raiyats.—(Famine Commission Report, App. I, p. 169.)

It may be mentioned that the provisions of cl. (*c*) are based on those of sec. 20 of the North-Western Provinces Tenancy Act (Act XII of 1881). The provisions of cl. (*d*) are manifestly just, as an enhancement authorized on account of a landlord's improvement is to be regarded in the light of interest on capital expended, and should, consequently, not be taken into consideration in ascertaining the rate of rent prevailing for lands in which no such improvement has been effected.

Enhancement on ground of landlord's improvement.

In the *Calcutta Gazette* of November 4, 1885, p. 988, is published the following notification, with reference to the provisions of cl. (*b*) of this section:

Government notification under cl. (*b*).

"Under sec. 392 of Act XIV of 1882, the Lieutenant-Governor has been pleased to make the following rules as to the persons to whom commissions shall be issued under the Bengal Tenancy Act.

"Whenever, under secs. 31 (*b*) and 158 (2) of the Bengal Tenancy Act, a Court directs that a local enquiry be held under Chap. XXV of the Code of Civil Procedure, the commission shall be issued to such person, not being below the rank of an Assistant or Deputy Collector, as the Collector of the district may, from time to time, select for the purpose.

"The Court shall issue a precept to the Collector requiring him forthwith to nominate a fit person as above to conduct the enquiry, and the commission shall be issued to the person so nominated."

Rules as to enhancement on ground of rise in prices.

32. Where an enhancement is claimed on the ground of a rise in prices—

(*a*) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison;

(*b*) the enhanced rent shall bear to the previous rent the same proportion as the average prices during

the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison: provided that, in calculating this proportion, the average prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period;

(*c*) if in the opinion of the Court it is not practicable to take the decennial periods prescribed in clause (*a*), the Court may, in its discretion, substitute any shorter periods therefor.

This is new.

What decennial periods may be taken for comparison.

Sir Steuart Bayley, in introducing the Tenancy Bill into Council, with reference to this section, said:—Formerly, it was necessary for the landlord to prove when the rent was last fixed, in order to enter into a comparison at all. But now, the Court may take any period *during the currency of the rent* that may be equitable and practicable for comparison. As a rule, in order to eliminate the effect of special seasons, decennial periods will be taken, but the Courts may, if necessary, substitute shorter periods" (*Government of India Gazette*, March 14th, 1885, p. 51). It is, however, an open question whether the Court is bound to take two decennial periods "*during the currency of the rent*" for comparison, or whether it can take for the purpose a decennial period anterior to the currency of the present rent. If, for example, the present rent was fixed ten years ago, and an enhancement is claimed on the ground that prices have risen during the past ten years, can the Court compare prices in the last decennial period with the prices in the previous decennial period 1865 to 1875? If the answer be in the negative, that is to say, if the comparison can be made only between decennial periods within the currency of the present rent, then there would not ordinarily be sufficient time for comparison, except where the present rents have been current twenty years or more. But if the Court may, in its discretion, take any anterior decennial period into consideration and institute a comparison between the prices in the last decennial period and the prices in any former decennial period, what is it to do in case it finds the rise in rents has outrun the rise in prices? May the Court, for example, in its discretion, take the prices prevailing in the decennial period 1830—40 for purpose of comparison with the

period 1875—85, and if it find that prices have risen since the period 1830—40 by 70 per cent, while rents have risen 500 per cent, may it refuse to decree any further enhancement of rent till the rise in prices becomes proportional to the rise in rents, which has already taken place? If the Court may do this, it would appear equitable, in the case supposed (which is said to be the actual case in parts of Behar), that the Courts should exercise the power, which would mean "no further enhancement for a century in such parts;" but if the Courts cannot take a decennial period anterior to the currency of the present rent, how are they to have two decennial periods in fifteen years, on the expiration of which term occupancy-raiyats' rents can ordinarily be enhanced? In order to justify an enhancement on the ground of rise in prices, there must, under sec. 30, be an increase in average prices during the currency of the present rent; but the question is, as compared with the average prices of what other period must this rise have taken place?

In order to facilitate comparison, the Local Government may draw up (see sec. 39) statements of past prices, publish them for criticism, and finally, after revision, publish statements of annual average prices, which the Courts will receive as presumptive evidence (cl. 6). It is understood, however, that the Local Government has determined not to do so at present for want of necessary data.

In cl. (*b*), the rule laid down by the majority of the Judges in the well-known rent case of *Thakurani Dasi* v. *Bisheshar Mookerjee* (B. L. R., F. B, 326; 3 W. R., Act X, 29) is followed:

The reduction prescribed in the latter part of cl. (*b*) is to allow for costs of production, which, it is said, has increased in a greater ratio than the prices of staple food-crops.

Rules as to enhancement on ground of landlord's improvement.

33. (1) Where an enhancement is claimed on the ground of a landlord's improvement—

(*a*) the Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act;

(*b*) in determining the amount of enhancement the Court shall have regard to—

(i) the increase in the productive powers of the land caused or likely to be caused by the improvement,

(ii) the cost of the improvement,

(iii) the cost of the cultivation required for utilizing the improvement, and

(iv) the existing rent and the ability of the land to bear a higher rent.

(2) A decree under this section shall, on the application of the tenant or his successor in interest, be subject to re-consideration in the event of the improvement not producing or ceasing to produce the estimated effect.

This is new.

The registration of landlord's improvements is provided for by sec. 80 (*post*). The improvement cannot, under sec. 80, be registered until it is made. A decree for enhancement cannot, therefore, be passed until the work is completed. This, however, does not apply to a contract for enhancement made out of Court, but the enhanced rent settled by contract out of Court cannot be realised, unless the enhancement exists and substantially produces the estimated effect (sec. 29, proviso ii).

Rules as to enhancement on ground of increase in productive powers due to fluvial action.

34. Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

(*a*) the Court shall not take into account any increase which is merely temporary or casual ;

(*b*) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

Enhancement by suit to be fair and equitable.

35. Notwithstanding anything in the foregoing sections, the Court shall not in any case decree any enhancement which is, under the circumstances of the case, unfair or inequitable.

This is new.

As pointed out in the note to sec. 24, it is not clear what is meant in this section by an unfair and inequitable enhancement. If it means

any enhancement which the Court considers unfair and inequitable, the question arises, by what standard is the Court to judge what is fair and equitable? If "fair and equitable" means fair and equitable as indicated in this Act, then the existing rent must be held to have been fair when it was fixed, and it must be enhanced if prices have risen since it was fixed. If the fairness is to be determined by any other standard, the question arises, what is that standard? If, for example, a Revenue-officer finds that the existing rent is so high that a raiyat who pays it cannot *live and prosper*, or that it does not leave the ordinary profits of capital to the cultivator, would he, or the Court, be justified in refusing to enhance such rents on any ground whatever, though prices may have risen during the currency of the tenancy, or though the rate is below the prevailing rate? We are unable to furnish an answer. Probably it is meant that the answer to the last question should be in the affirmative, and, if so, the Courts may, under this section, refuse enhancements wherever rents are already excessive, notwithstanding a rise in prices during the currency of the present rent, or that the rates in individual cases may be below the prevailing rates.

Power to order progressive enhancement.

36. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the raiyat, it may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five until the limit of the enhancement decreed has been reached.

Limitation of right to bring successive enhancement-suits.

37. (1) A suit instituted for the enhancement of the rent of a holding on the ground that the rate of rent paid is below the prevailing rate, or on the ground of a rise in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March, 1883, or if within the said period of fifteen years the rent has been commuted under section 40, or a decree has been passed under this Act,

or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid or on any ground corresponding thereto, or dismissing the suit on the merits.

The 2nd March, 1883, is, as already pointed out, the date on which leave to introduce the Bengal Tenancy Bill into Council was obtained. This section is meant to protect raiyats who, after this date and before the passing of this Act (after which time their rents, of course, cannot be enhanced otherwise than in accordance with its provisions), have been induced to enter into contracts for the enhancement of their rent.

(2) Nothing in this section shall affect the provisions of section 373 of the Code of Civil Procedure.

XIV of 1882.

Section 373 of the Civil Procedure Code provides for a Court allowing a plaintiff to withdraw his suit or abandon part of his claim, with liberty to bring a fresh suit, on account of (*a*) some formal defect, or (*b*) other sufficient grounds, in which case the Court may pass such order as to costs as it thinks fit. A plaintiff cannot bring a fresh suit, if he withdraws his suit or abandons part of his claim without the permission of the Court, or, if being one of several plaintiffs, he does so without the consent of the others.

Reduction of Rent.

Reduction of rent.

38. (1) An occupancy-raiyat holding at a money-rent may institute a suit for the reduction of his rent on the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise (namely) :—

(*a*) on the ground that the soil of the holding has without the fault of the raiyat become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual, or

(*b*) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent.

(2) In any suit instituted under this section, the Court may direct such reduction of the rent as it thinks fair and equitable.

This is new.

A tenant cannot contract himself out of the provisions of this section (see sec. 178, sub-sec. (3), cl. (*f*).

An instance of a tenant having been held entitled to an abatement of rent under the old law, on the ground of part of his land having been covered with sand, will be found reported at W. R., Sp. No., 1864, Act X, 42 (*Enayatullah* v. *Elahi Buksh*).

Occupancy-raiyats cannot claim abatement of rent on any ground not mentioned in this section.

It is to be noted that by the insertion of the words "*and*, ... *not otherwise*" in this section, the Legislature expressly precludes the occupancy-raiyat from applying for an abatement on the ground that his rent is above the "prevailing rate," or on any other ground not mentioned in this section. It would, therefore, appear that if an occupancy-raiyat is *de facto* paying a rent so exorbitant as to leave no profit at all on his capital and no return for his labour, still the Court or a Revenue-officer, in proceeding under Chap. X, must presume that the rent is fair, and cannot reduce it, unless prices have fallen during the currency of the tenancy, or the soil has deteriorated by a deposit of sand.

The old law was, however, to the same effect—see the case of *Babun Mandle* v. *Shib Koomaree Burmonee* (21 W. R., 404), in which it was held, that a raiyat could not sue for abatement of rent simply because the lands he held were rated higher than those of the same description with similar advantages held by raiyats of the same class in the vicinity.

There are some cases decided under the old law which lay down, that a landlord receiving a remission of his revenue from Government on condition that he would similarly reduce his raiyats' rents could be compelled to allow them an abatement of their rents (see 1 Ind. Jur., 7, *Subhawatullah*; *Goluck Chunder Mytee* v. *Parbotty Churn Das*, 15 W. R., 168). But this could not be held now.

An abatement of rent cannot be applied for even on the ground of fraud. The person injured by fraud may apply to be relieved of his contract, but he cannot apply under this section for an abatement of rent (*Shokoor Ali* v. *Umola Ahalya*, 8 W. R., 501).

Price-Lists.

Price-lists of staple food-crops

39. (1) The Collector of every district shall prepare, monthly or at shorter intervals, periodical lists of the market-prices of staple food-crops grown in such local areas as the Local Government may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

(2) The Collector may, if so directed by the Local Government, prepare for any local area like price-lists relating to such past times as the Local Government thinks fit, and shall submit the lists so prepared to the Board of Revenue for approval or revision.

(3) The Collector shall, one month before submitting a price-list to the Board of Revenue under this section, publish it in the prescribed manner within the local area to which it relates, and if any landlord or tenant of land within the local area within the said period of one month presents to him in writing any objection to the list, he shall submit the same to the Board of Revenue with the list.

(4) The price-lists shall, when approved or revised by the Board of Revenue, be published in the official Gazette; and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

(5) The Local Government shall cause to be compiled from the periodical lists prepared under this section lists of the average prices prevailing throughout each year, and shall cause them to be published annually in the official Gazette.

(6) In any proceedings under this chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the lists pub-

lished under this section, and shall presume that the prices shown in the lists prepared for any year subsequent to the passing of this Act are correct, unless and until it is proved that they are incorrect.

(7) The Local Government, subject to the control of the Governor General in Council, shall make rules for determining what are to be deemed staple food-crops in any local area and for the guidance of officers preparing price-lists under this section.

This is new.

Clause (2). The Local Government has determined for the present not to prepare price-lists relating to past times owing to the absence of necessary data. Rules have been framed by the Local Government under this section for the preparation of price-lists relating to present and future times. They will be found in Appendix I.

Commutation of rent payable in kind.

40. (1) Where an occupancy-raiyat pays for a holding rent in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, either the raiyat or his landlord may apply to have the rent commuted to a money-rent.

(2) The application may be made to the Collector or Subdivisional Officer, or to an officer making a settlement of rents under Chapter X, or to any other officer specially authorized in this behalf by the Local Government.

(3) On the receipt of the application the officer may determine the sum to be paid as money-rent, and may order that the raiyat shall, in lieu of paying his rent in kind, or otherwise as aforesaid, pay the sum so determined.

(4) In making the determination the officer shall have regard to—

(*a*) the average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity;

(*b*) the average value of the rent actually received by the landlord during the preceding ten years or during any shorter period for which evidence may be available; and

(*c*) the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges.

(5) The order shall be in writing, shall state the grounds on which it is made, and the time from which it is to take effect, and shall be subject to appeal in like manner as if it were an order made in an ordinary revenue proceeding.

(6) If the application is opposed, the officer shall consider whether under all the circumstances of the case it is reasonable to grant it, and shall grant or refuse it accordingly. If he refuses it, he shall record in writing the reasons for the refusal.

This section is intended to provide for the commutation of rent payable under the *bhaoli* system, which prevails extensively in the South Gangetic Districts of Behar.

Under cl. (*g*), sub-sec. (3), sec. 178 (*post*), no raiyat can now contract himself out of the provisions of this section.

Can raiyats holding at fixed rates commute produce rents?

It has been asked whether raiyats holding at fixed rates, if their rents are payable in kind, as, for example, where the raiyat has always paid a fixed rate of so many maunds of rice per bigha, can apply under this section to have them commuted to money-rents. It is difficult to say what answer should be given to this question. On the one hand, raiyats holding at fixed rates have rights of occupancy, and it does not seem reasonable, nor does it seem likely to have been intended, that they should have less privileges than those accorded to occupancy-raiyats. On the other hand, they are placed in a distinct and separate class from occupancy-raiyats, and the provisions of sec. 40 would seem to apply exclusively to the latter. Until, therefore, the question is settled by judicial decision, it cannot be predicated with certainty that raiyats holding at fixed rates are entitled to commute their rents payable in kind into money-rents.

Before leaving this subject of occupancy-raiyats, it will be useful to note the changes made by the Act in the position of a tenant of this class. They may be briefly summarized as follows:—(1) Instead of, as formerly, having to prove that he has held every particular field for more than twelve years, an occupancy-raiyat has now (sec. 20, cl. 1) only to have held any land in the *village* for twelve years, and he at once acquires rights of occupancy in all the lands held by him in that village, and in any proceeding between himself and his landlord, it is presumed (sec. 20, cl. 7), in the absence of proof to the contrary, that he is an occupancy-raiyat of the land which he is found to be holding. (2) He cannot now—sec. 178, cl. (3) (*a*)—contract himself out of his occupancy status, though he may admit that he is a non-occupancy raiyat, and the Courts may act on his admission—sec. 20 (7). (3) His rent can only (secs. 29 and 30) be enhanced by a Court, or by written and registered agreement. If enhanced by contract, the enhanced rent cannot, except in two specified cases, exceed by more than two annas in the rupee the rent previously paid by the raiyat, and if once enhanced, whether by suit or by contract, it cannot (sec. 29, cl. (*c*), and sec. 37) be enhanced again for fifteen years. (4) The raiyat has now (sec. 77) power to make improvements, and can (sec. 82) recover compensation for his improvements in case of eviction. (5) Three months must (sec. 147) intervene between the institution of successive suits for arrears of rent. (6) An occupancy-raiyat (sec. 65) cannot now be evicted in execution of a decree for arrears of rent. The holder of a decree for arrears of rent must bring the tenancy to sale. (7) The provisions of the law regarding distraint (Chap. XII) have been made less open to abuse. Against all this must be set the facts that the enhancement of his rent has been greatly facilitated, and that in no case which is ordinarily likely to arise can he obtain a reduction of his rent, though his existing rent be ever so high.

Changes made by Act in position of occupancy-raiyats.

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

This chapter must be read in connection with sec. 116, which provides that nothing in Chap. V shall confer a right of occupancy in, and that nothing in this chapter shall apply to, a proprietor's private lands, where any such land is held under a lease for a term of years, or under a lease from year to year. This chapter is also subject to the provisions of sec. 180, cl. (2), which excludes raiyats holding

under the custom of *Utbandi* (see note to secs. 20 and 180 for an explanation of this term) from the provisions of the chapter.

Application of chapter.

41. This chapter shall apply to raiyats not having a right of occupancy who are in this Act referred to as non-occupancy-raiyats.

From the sequel it will be seen that the term "tenants-at-will," which has hitherto been popularly applied to non-occupancy-raiyats, is now no longer applicable to them; and, indeed, according to some authorities, the term never was applicable to any class of raiyats in Bengal.

Initial rent of non-occupancy-raiyat.

Act X, 1859, s 8; Act VIII of 1869 (B.C.), s. 8.

42. When a non-occupancy-raiyat is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.

The contract between a non-occupancy-raiyat and his landlord may be an oral or a written one. If it be a written one, it must be registered, if it be from year to year, or for any term exceeding one year, or reserving a yearly rent. In one respect a non-occupancy-raiyat holding under an oral or written but unregistered lease (for example, a lease for a term not exceeding one year, the registration of which is optional) would seem to be in a better position than a raiyat of the same class holding under a written and registered lease, as he would seem not to be liable to be ejected on the expiry of its term. (See sec. 44, cl. (*c*), *post.*)

Conditions of enhancement of rent.

43. The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by agreement under section 46:

This is new.

Provided that nothing in this section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

44. A non-occupancy-raiyat shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise (namely) :— Grounds on which non-occupancy-raiyat may be ejected.

(*a*) on the ground that he has failed to pay an arrear of rent; Act X, 1859, s. 21; Act VIII, 1869 (B. C.), s. 22.

Section 65 protects a tenure-holder, a raiyat holding at fixed rates, and an occupancy-raiyat, but not a non-occupancy-raiyat, from ejectment for arrears of rent: But a non-occupancy-raiyat cannot be ejected (sec. 89, *post*) except in execution of a decree.

(*b*) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected;

See note to sec. 25, which is equally applicable to this section. Under sec. 155, a non-occupancy-raiyat, before he can be ejected on either of the above specified grounds, is entitled, just as much as an occupancy-raiyat, to a notice specifying the misuse or breach complained of, and requiring him to remedy the same where possible, and in any case to pay reasonable compensation for the misuse or breach of condition of his lease.

(*c*) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired;

From the words "and not otherwise" in sec. 44, it appears that, unless a non-occupancy-raiyat's initial lease is written and registered, he cannot be ejected on the expiry of its term merely on the ground of its expiry. In other words, a non-occupancy-raiyat, if admitted to the occupation of any land on a verbal, or on a written but not registered, lease, cannot be ejected on its expiry, except on the grounds specified in cls. (*a*), (*b*), and (*d*) of this section.

(*d*) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold at such a rent has expired.

Conditions of ejectment on ground of expiration of lease.

45. A suit for ejectment on the ground of the expiration of the term of a lease shall not be instituted against a non-occupancy-raiyat unless notice to quit has been served on the raiyat not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

This is new.

This notice would seem only to be required in cases referred to in cl. (*c*), sec. 44, and cl. (*b*) (7), sec. 46. No notice to quit can be issued to a non-occupancy-raiyat holding under an oral, or written but unregistered, lease, for he is not liable to be ejected on the ground of expiration of the term of his lease. The mode of service of this notice is prescribed by rule, which will be found in Appendix I.

Conditions of ejectment on ground of refusal to agree to enhancement.

46. (1) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-raiyat unless the landlord has tendered to the raiyat an agreement to pay the enhanced rent, and the raiyat has, within three months before the institution of the suit, refused to execute the agreement.

(2) A landlord desiring to tender an agreement to a raiyat under this section may file it in the office of such Court or officer as the Local Government appoints in this behalf for service on the raiyat. The Court or officer shall forthwith cause it to be served on the raiyat in the prescribed manner, and when it has been so served, it shall for the purposes of this section be deemed to have been tendered.

The following rule has been framed by the Local Government under cl. (2) of this section.

"The agreement under this section shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served on the raiyat in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, and shall be subject to the same process-fee" (see Appendix I).

(3) If a raiyat on whom an agreement has been served under sub-section (2) executes it, and within one month from the date of service files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following.

(4) When an agreement has been executed and filed by a raiyat under sub-section (3), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

(5) If the raiyat does not execute the agreement and file it under sub-section (2), he shall be deemed for the purposes of this section to have refused to execute it.

(6) If a raiyat refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(7) If the raiyat agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment under the conditions mentioned in the last foregoing section, unless he has acquired a right of occupancy.

(8) If the raiyat does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(9) In determining what rent is fair and equitable, the Court shall have regard to the rents generally paid

by raiyats for land of a similar description and with like advantages in the same village.

(10) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

This is new.

It is to be observed, that in determining fair and equitable rents for non-occupancy-raiyats, the point to which the Court is to have regard is the rent generally paid by raiyats for land of a similar description and with similar advantages in the same village; while in determining fair and equitable rents in the case of occupancy-raiyats, the rent for the time being payable is presumed to be fair, and is liable to enhancement or reduction on certain specified grounds. In settling fair rents under Chap. X, the Revenue-officer shall presume, for occupancy and non-occupancy-raiyats alike, that the existing rent is fair till the contrary is proved. The method of serving the notice under cl. (4) has been prescribed by the Local Government, and will be found in Appendix I.

Explanation of "admitted to occupation."

47. Where a raiyat has been in occupation of land and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this chapter, notwithstanding that the lease may purport to admit him to occupation.

This is new.

This prevents the raiyat being ejected on the expiry of this lease, as he can be after the expiry of his initial lease.

Changes made by Act in position of non-occupancy-raiyats.

The changes made by the Act in the position of the non-occupancy raiyat may be here pointed out: (1) Under the old law, the non-occupancy-raiyat could get a pottah only at the rates agreed upon with his landlord. Now, this provision applies only at the time of his admission to the land. When he has been once admitted to the land, if allowed to stay on after the expiry of the term of his initial lease, he can only be made to pay a fair and equitable rent, as defined in sec. 46, sub-sec. 9. (2) Formerly, he could be ejected on the expiry of his lease, and if he had no lease, he could be ejected at any time after

service on him of a notice to quit. Now, he can only be ejected on the expiry of his lease, if it be a written and registered one, and even then only by suit. If allowed to stay on for six months after its expiry without a suit for ejectment being brought against him, he can no longer be ejected on that ground. He can only be ejected for non-payment of his rent, or on the other grounds specified in sec. 44, cls. (*a*), (*b*), and (*d*). (3) Formerly, his rent was liable to enhancement, as often as his landlord pleased, after service of notice of enhancement. Now, he is liable to enhancement in two ways: (*a*) by registered agreement, and (*b*) by suit in Court, when he can only be made to pay what the Court determines to be a fair and equitable rent; but enhancement by suit carries with it, if the raiyat accepts it, a lease for five years, at the rate fixed by the Court, after which he can be ejected unless he has meanwhile acquired rights of occupancy.

It is to be noticed that there is no provision in the Act enabling a non-occupancy-raiyat to claim an abatement of the rent previously paid by him, as there is in the case of occupancy-raiyats (see sec. 38, *ante*). A non-occupancy-raiyat, therefore, is not entitled to have his rent reduced, except on the ground of diminution of the area of his holding (sec. 52, cl. *b*). But in this respect no change has been made in the former law.

CHAPTER VII.

UNDER-RAIYATS.

48. The landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following percentage of the same (namely):— Limit of rent recoverable from under-raiyats.

(*a*) when the rent payable by the under-raiyat is payable under a registered lease or agreement—fifty per cent.; and

(*b*) in any other case—twenty-five per cent.

This is new.

It is to be observed that this section makes any amount in excess of the limits laid down in cls. (*a*) and (*b*) of this section not *recoverable* under this Act. It does not provide that such excess amount shall not be *payable* by the under-raiyat. Hence, the excess amount Distinction between "lawfully recoverable" and "law-

fully payable."

may still come under the definition of "rent," laid down in sec. 3, cl. (5); for it may possibly be lawfully payable, though not lawfully recoverable. Thus, the holder of an estate in respect of which a notice of valuation has been issued under sec. 17, Act IX of 1880 (B. C.) (the Cess Act), is precluded from recovering rent in respect of land for which the prescribed return has not been filed, though such rent may manifestly be lawfully payable. A Revenue-officer, when proceeding under Chap. X of this Act, will, therefore, probably be justified in recording, as the rent of an under-raiyat, any amount paid by him, though it may be in excess of the amount lawfully recoverable under the provisions of this section; and, if this view be correct, a raiyat-landlord receiving such an amount will not necessarily render himself liable to the penalty provided in sec. 75 for exacting a sum in excess of the rent lawfully payable.

Restriction on ejectment of under-raiyats.

49. An under-raiyat shall not be liable to be ejected by his landlord, except—

(*a*) on the expiration of the term of a written lease;

(*b*) when holding otherwise than under a written lease, at the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord.

This is new.

No notice to quit is required to be given to an under-raiyat holding under a written lease, to compel him to quit on the expiry of his lease, but if holding otherwise than under a written lease (cl. *b*), he is entitled to at least a year's notice. The provisions of sec. 89, which provide that no *tenant* shall be ejected from his tenure or holding except in execution of a decree, would seem to be meant to include under-raiyats, for an under-raiyat is a tenant. At the same time his interest in the land is not a "tenure," nor yet a "holding," for in sec. 3, cl. (9), "holding" is defined as "a parcel or parcels of land held by a raiyat." There is, therefore, room for contention as to whether an under-raiyat may not be ejected by his landlord without resorting to the Courts. This, however, can hardly have been the intention of the framers of this Act. Notwithstanding the terms of this section, it is evident from sec. 66, cl. (1), *post*, that an under-raiyat may also be ejected by a Court for failure to pay an arrear of rent.

This chapter is silent on one very important point,—namely, the question of the acquisition by under-raiyats of occupancy-rights as against their raiyat-landlords. Under Acts X of 1859 and VIII of 1869 (B. C.), rights of occupancy could not be acquired in lands sublet by an occupancy-raiyat for a term, or year by year. This would seem to imply that an under-raiyat could acquire rights of occupancy in lands sublet to him otherwise than for a term, or year by year, that is, on a parol contract of letting, or on a permanent lease. However, the High Court, by a long series of decisions, laid down the broad rule, that an under-raiyat could not acquire a right of occupancy in any land held or cultivated by him (see *Gilmore* v. *Surbessuree Dassee*, W. R., Sp. No., 1864, Act X, 72; *Jumeeuttunnissa Bibi* v. *Noor Mohomed*, W. R., Sp. No., 1864, Act X, 78; *Ketal Gain* v. *Nadeer Mistree*, 6 W. R., 168; *Abdul Jubbur* v. *Kalee Churn Dutt*, 7 W. R., 81; *Kali Kishor Chatterjee* v. *Ram Churn Saha*, 9 W. R., 344; *Haran Chundra Pal* v. *Mukta Sundari Chowdhrani*, 10 W. R., 113; 1 B. L. R., A. C., 81; *Nil Komal Sen* v. *Danesh Sheikh*, 15 W. R, 469; *Unnopoorna Dassee* v. *Radha Mohon Pattro*, 19 W. R., 95). Now, as the Act is silent on this point, the question is left to be regulated by custom. An under-raiyat cannot acquire rights of occupancy in any land held by him, except where there is a custom or local usage under which he can acquire such a right. That this is now the law on the subject is clear from illustration 2 to sec. 183, which runs thus: "The custom or usage that an under-raiyat should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act."

Acquisition by under-raiyats of occupancy-rights.

Another point left unsettled by this chapter is, the question of the transferability of an under-raiyat's right. Under the old law, such rights were not transferable without the consent of the raiyat's landlord (*Bonomali Bajadar* v. *Koilash Chunder Mozoomdar*, I. L. R., 4 Calc., 135). But there can be no doubt that now, under the provisions of sec. 183, such rights may be transferable under custom or local usage, but not otherwise.

Transferability of an under-raiyat's right.

CHAPTER VIII.

General Provisions as to Rent.

The following general principles relating to the relations of landlord and tenant, based principally on the rulings of the High Court, have not been embodied in this Act, on the ground that it is not intended to be a complete digest of the Rent Law of Bengal. But they have so much become a part of the Rent Law of Bengal, that it would probably be felt to be a serious omission if no reference were made to them. We can find no better place for inserting them than the commencement of this chapter, which deals with "General Provisions as to Rent."

Relation of landlord and tenant must exist before provisions of rent law can be put in force.

(*a*) Before putting in force the provisions of the Rent Law between parties, a Court must first be satisfied that the relation of landlord and tenant exists between them (*Syed Jeshan Hossein* v. *Baker*, 3 W. R., Act X, 3; *Ramessur Adhikari* v. *Watson & Co.*, 7 W. R., 2; *Doyal Chand Sahoy* v. *Nebin Chunder Adhikari*, 8 B. L. R., 180; *Chunder Nath Chowdery* v. *Ashanullah Mondol*, 10 W. R., 438; *Ram Kristo Doss* v. *Sheikh Harain*, I. L. R., 9 Calc., 517; 12 C. L. R., 141). Such a relation will not exist between a raiyat and a zemindar until the former has obtained possession (*Bharat Chunder Sen* v. *Oseemooddeen*, 6 W. R, Act X, 56; *Harish Chunder Kundu* v. *Mohini Mohun Mitter*, 9 W. R., 582; *Bullen* v. *Lalit Jha*, 3 B. L. R., App., 119). Eviction by title paramount to that of the lessor is a good answer in a suit for arrears of rent (*Gopanund Jha* v. *Lalla Gobind Pershad*, 12 W. R., 109). The relationship of landlord and tenant does not exist between a landlord and a trespasser (*Mohunt Jalha* v. *Koylash Chunder Dey*, 10 W. R., 407).

How relationship of landlord and tenant may arise.

(*b*) This relationship of landlord and tenant may arise between the parties by means of a contract, express or implied, between them, or by operation of law. Thus, in the case of *Nityanund Ghose* v. *Kishen Kishore* (W. R., Sp. No., 1864, Act X, 82), in which a raiyat admittedly held and cultivated a zemindar's land, though without express permission to cultivate on the part of the zemindar, or express agreement to pay rent on the part of the raiyat, it was held that, by the universal custom of the country, the raiyat was the zemindar's

tenant, and bound, while so holding and cultivating, to pay him a fair rent. This was on the ground that there was an implied contract between them. Payment of rent is always held to be good evidence of such an implied contract. The resumption by Government of invalid *lakhiraj* land creates the relationship of landlord and tenant between the zemindar and the holder of such land (*Hurro Pershad Chowdry* v. *Shama Pershad Roy Chowdry*, 6 W. R., Act X, 107). Similarly, the decree of a competent Court, finding that the defendant has no right to hold land as *lakhiraj*, creates this relationship between him and the proprietor of the land (*Sowdaminee Debee* v. *Soroop Chunder Roy*, 8 B. L. R., App., 82; 17 W. R., 363).

Effect of non-registration of proprietor's name, and of non-submission of cess returns.

(*c*) In some cases, however, in which the relationship of landlord and tenant admittedly exists, the tenant is not bound to pay the landlord rent. Thus, if the tenant plead that the rent-claimant, being a proprietor, and bound, therefore, to have his name registered in the Collector's Registers under sec. 38, Act VII of 1876 (B. C.), has yet not had his name registered, and that he is therefore not entitled to the rent, the Court must, if the plea is proved, dismiss the suit. Similarly, under the Cess Act, IX of 1880, B. C., all holders of estates or tenures in respect of which a notice of valuation or re-valuation has been issued under sec. 17 of that Act, are precluded (sec. 19) from suing or recovering rent for any land or tenure in respect of which the prescribed returns have not been lodged, and these are instances in which rent is lawfully payable, though not lawfully recoverable, through the Courts (see note to sec. 48). The Collector may send a list to the Civil Court of such holders so making default, and the Court is bound to take judicial notice of the same (sec. 19); but whenever the return is lodged, the disability ceases. Further, every holder of an estate or tenure in respect of which a return has been made under the Cess Act is precluded (*a*) from recovering any rent whatever for any land, building, holding or tenure forming part of the estate or tenure to which such return relates, but which has not been mentioned in such return, unless it be proved that the holding or tenure, for the rent of which the rent is claimed, was created subsequently to the lodging of such return; (*b*) also from suing or recovering rent at a higher rate than is mentioned in such return for any land, tenure, or holding included in such return, unless it be proved that the rent of such land has been lawfully enhanced subsequently to the lodging of such return. The returns which must be filed under the Cess Act are the following:

Form of Return prescribed by Sec. 14.

Forms of returns under Cess Act.

Amount of Government revenue or rent payable by the estate or tenure : Rs. A. P.

PART I.

District

Name by which the estate or tenure is known, and the number which it bears on the Collector's General Register, or on any other register kept by the Collector.

Details of lands in the actual occupation or cultivation of the person submitting the return :—

1	2	3	4	5
Pargana.	Name of village and tháná in which the lands are situate.	Area of land.	Deduct area of land situate within any municipality.	Annual value of remaining land.

NOTE.—*Only nij-jote lands and unculturable unlet lands should be included in this part.*

PART II.

District

Name and number of estate or tenure, as in Part I.

Details of lands held by cultivating raiyats paying direct to the persons submitting the return :—

1	2	3	4	5	6	7
Pargana.	Names of village and tháná in which the lands are situate.	Name of raiyat, name of village, tháná and district in which he resides.	Area occupied.	Annual rent.	Deduct rent of land included in any municipality.	Balance of net rent assessable.

PART III.

District

Name and number of estate or tenure, as in Part I.

Details of the tenure-holders paying to the person submitting the return :—

1	2	3	4	5	6	7	8
Name of tenure-holder and person paying rent for him borne on the books of holder of estate or tenure.	Name of village, tháná and district in which such person resides.	Name of village and tháná in which tenure is situated.	Name of village and tháná in which mal kutchery is situate.	Area, if known.	Annual rent paid by tenure-holder.	Deduct rent of land included in any municipality.	Balance of net rent assessable.

PART IV.

District

Name and number of estate or tenure, as in Part I.

Details of lands included in the estate or tenure of the person submitting the return, which are held by others than himself, but for which no rent is paid :—

1	2	3	4	5	6	7
Pargana in which situate.	Name of village and thána in which situated.	Name of holder and owner, if known.	Name of village, thána and district in which the holder resides.	Area, if known.	Deduct area of land included in any municipality.	Annual value of remaining land.

I, X.Y Z., do declare that the statements contained in the above return are true to the best of my knowledge, information, and belief.

Signed ———

N.B.—*This return must be signed by the holder or his authorized agent, whose address must also be given.*

Cess Act returns supply a binding record of rents.

It is to be observed that these returns contain the areas and rents of every tenure-holder's tenure and raiyat's holding, and that they, therefore, supply a record of rents, which is binding as against the landlord; further, that the landlord is absolutely precluded from suing for rent not mentioned in such returns, or at a higher rate than the rate mentioned in them, unless it be proved that the rent has been lawfully enhanced subsequently to the filing of the return. All this would appear to have been overlooked in the discussions on the subject of enhancing rent out of Court, during which it was asserted that, there being no written engagements showing the amounts of the present rents, it would be unreasonable to insist that contracts for the enhancement of existing rents should be written and registered. So far as the landlord is concerned, there is, in the cess returns, a written record of rents, and if any rent is claimed from occupancy-raiyats over and above the amounts shown in that record, the landlord must show that the rent entered therein has been enhanced since the returns were lodged either (*a*) by order of a Court, or (*b*) by registered agreement. It is doubtful whether the actual payment of an enhanced rent for three years would, having regard to sec. 29, proviso 1 of this Act, suffice to show that the rent mentioned in the cess returns had been lawfully enhanced. The obligation to have a

contract for the enhancement of occupancy-raiyats' rents written and registered does not prevent a landlord from recovering an enhanced rent actually paid for three years, though there be no registered agreement; but whether actual payment for three years would be proof that rent has been lawfully enhanced, which is what is required under sec. 20 of the Cess Act, is a different question. It would, therefore, appear that proof of payment of the rent shewn in the cess returns would be a sufficient answer to a claim for a higher rent than is mentioned therein, till the landlord has shown that the rent given in the returns has not only been enhanced, but that the enhancement was in accordance with law. These stringent provisions of the Cess Act, read with sec. 29 of this Act, make it very necessary for landlords to exercise great care in the preparation of the returns they lodge under the Cess Act. If these returns show higher rents than are actually payable or paid, the landlord is liable for an unduly high amount of cess; if they show less than is actually paid or payable, the landlord is precluded from suing for, or recovering, more than is shown in the returns, unless he prove that the rent shown in the returns has been enhanced since they were filed, and that it has been enhanced in accordance with law, which, in the case of occupancy-raiyats, must ordinarily be by decree of Court, or by written and registered agreement. Neither the Civil Courts, Revenue-officers, raiyats, nor zemindars appear to have hitherto paid much attention to these provisions of the Cess Act affecting suits for recovery of rent or for enhancement of rent.

Importance of Cess Act returns.

Leases cannot be granted for terms exceeding grantor's interest.

(*d*) No landlord can grant a valid lease for a term exceeding his own interest. A lease granted for a term so in excess is valid to the extent of such interest, and void only as to the excess; but if the lessor subsequently acquires such excess, the lease is as against him valid for the excess also (*Koylas Chunder Biswas* v. *Biressuree Dassee*, 10 W. R., 408; *Dumree Sheikh* v. *Bisseshur Lall*, 13 W. R., 291; *Syed Anteer Ali* v. *Hera Singh*, 20 W. R., 291; *Harish Chunder Roy Chowdhry* v. *Sree Kalli Mookerjee*, 22 W. R., 274; sec. 115, Act I of 1872).

Landlord bound to give peaceable possession.

(*e*) A landlord is bound upon a new letting to give the tenant peaceable possession of the property (*Munee Dutt Singh* v. *Campbell*, 11 W. R., 278). It is not necessary for the lessee to apply to his lessor to be put in possession (*Munee Dutt Singh* v. *Campbell*, in review, 12 W. R., 149). A landlord is further bound to maintain his tenant in the peaceable and quiet possession and enjoyment of the tenure, under-tenure, holding or land. But this duty only extends to inter-

ruption or disturbance by the landlord himself, or any one claiming under, or paramount to, him, and does not extend to interruption or disturbance by third parties (*Hurrish Chunder Kundu* v. *Moheneemohon Mitter*, 9 W. R., 582; *Govind Chand Juttee* v. *Munmohon Jha*, 14 W. R., 43; *Mussamut Hoymobuti Dassi* v. *Sree Kishen Nundi*, 14 W. R., 58; *Gobind Chunder Dutt* v. *Kristo Kanto Dutt*, 14 W. R., 273; *Kristo Sundar Sandyal* v. *Kumar Chundranath Roy*, 15 W. R., 230; *Brajanath Pal Chowdhry* v. *Hira Lal Pal*, 1 B. L. R., A. C., 87; 10 W. R., 120; *Bullen* v. *Lolit Jha*, 3 B. L. R., App., 119; *Donzelle* v. *Gridhari Singh*, 23 W. R., 121; *Radhanath Chowdhry* v. *Joy Soonder Moitro*, 2 C. L. R., 302).

Tenant cannot deny landlord's title.

(*f*) No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property; and no person who came upon immoveable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given (sec. 116, Act I of 1872). But although a tenant may not, during the continuance of the tenancy, deny that his landlord had a title at the beginning of such tenancy, he may show that such title has expired (*Burn & Co.* v. *Bisho Moyee Dossi*, 14 W. R., 85), or has been defeated by a title paramount (*Gopanund Jha* v. *Lalla Gobind Pershad*, 12 W. R., 109). Further, the words "at the beginning of the tenancy" in sec. 116, Act I of 1872, only apply to cases in which tenants are put into possession of the tenancy by the person to whom they have attorned, and not to cases in which the tenants have previously been in possession, so that when A, a raiyat, being in possession of a certain holding, executed a kabuliyat regarding this holding in favor of B (who claimed the land, in which the holding was included, under a derivative title from the last owner), and paid rent to B thereunder, it was held that A was not estopped by sec. 116 of the Evidence Act from disputing B's title (*Lal Mahomed* v. *Kalonas*, I. L. R., 11 Calc., 519); and one who pays rent to another, believing him to be the landlord's representative, is not estopped from afterwards showing the want of title in that other (*Banee Madhav Ghose* v. *Thakurdas Mundul*, B. L. R., F. B., 588).

Forfeiture of rights by denial of landlord's title.

(*g*) A tenant who directly repudiates the relation of landlord and tenant and sets up an adverse title in another or himself forfeits all his rights, and the landlord is entitled to treat the relationship as

determined (*Mirza Nadir Beg* v. *Muddaram*, 2 W. R, Act X, 2; *Pandey Bishonath Roy* v. *Bhyrub Sing*, 7 W. R., 145; *Ram Nuffer Bhuttacharjee* v. *Dhol Gobind Thakoor*, 1 C. L. R., 421; *Dabee Misser* v. *Mungur Meah*, 2 C. L. R., 208; *Sattyabhama Dassea* v. *Krishun Chunder Chatterjee*, I. L. R., 6 Calc., 55; *Mozhuruddin* v. *Gobind Chunder Nundi*, I. L. R., 6 Calc., 436; *Ishan Chunder Chattopadhya* v. *Shama Churn Dutt*, I. L. R., 10 Calc., 41). But the fact of a tenant having stated in a former suit that he had a good title as against a person alleging himself to be the assignee of the original landlord, does not constitute a forfeiture of the tenure, or warrant a suit by the landlord for *khas* possession (*Doorga Kirpa Roy* v. *Sree Janoo Lathak*, 18 W. R., 465).

Rules and presumptions as to amount of Rent.

Rules and presumptions as to fixity of rent.

Sec. 3. Act X, 1859; s. 3, Act VIII. B.C., 1869.

50. (1) Where a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenure or holding.

Sec 4, Act X, 1859; s. 4, Act VIII, B C., 1869.

(2) If it is proved in any suit or other proceeding under this Act that either a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement:

This section must be read with sec. 115, which provides that, when the particulars mentioned in sec. 102, cl. (*b*), have been recorded under Chap. X (Record-of-Rights and Settlement of Rents), the presumption under this section shall not thereafter apply to that tenancy.

Does not apply to temporarily settled estates.

This presumption does not apply to temporarily settled estates, as in such estates the rates of rent are necessarily not fixed in perpetuity. (See sec. 191, *post.*)

Produce-rents not fixed rents.

It is said in the *Government of India Gazette* of March 14th, 1885, p. 58, that this presumption does not apply to produce-rents, for "where the rent is paid in kind, although the propor-

tion of the gross produce paid remains the same, yet, by a self-acting machinery, this very fact discounts the rise in prices, and rents are thus of necessity enhanced or reduced, as prices rise or fall."

The rulings of the High Court on this point are conflicting. In *Thakurani Dasi* v. *Bisheshor Mookerjee* (B. L. R., F. B., 326; 3 W. R., Act X, 29), *Ram Dayal Sing* v. *Baboo Latchmi Narain* (6 B. L. R., App., 25; 14 W. R., 388), and *Hanuman Pershad* v. *Kameshar Pandey* (I. L. R., 1 All., 301) it has been held, that a rent in kind which, though it varies yearly in amount with the varying amount of the yearly produce, is fixed as to the proportion it is to bear as to such produce, is a fixed rent within the meaning of sec. 3 of Act X of 1859. In *Yacoob Hossain* v. *Wahid Ali* (4 W. R., Act X, 23), *Hanuman Pershad* v. *Ramjay Sing* (H. C. R., N. W. P., 1874, 371), and *Thakur Pershad* v. *Mohomed Baker* (8 W. R., 170) it has been held, that a *bhaoli* rent, varying yearly with the varying amount of the gross produce of the land, though fixed as to the proportion which it is to bear to such produce, is not a fixed unchangeable rent to which the presumption of law laid down by sec. 4, Act X of 1859, is applicable.

The editors submit that the latter view is the correct one, and that a fixed proportion of the produce is not ordinarily a fixed rent, or rate of rent, within the meaning of this section. It was certainly not intended by the framers of the Act to be a fixed rent or rate of rent, for if it were, neither tenants of *bhaoli* holdings, who would be tenants at fixed rates, nor their landlords could apply for commutation to a money-rent. Under sec. 40, it will be seen, only occupancy-raiyats and their landlords can apply for commutation of their rent in kind to a money-rent. There is, however, a kind of produce-rent, known in Behar as *munkhap*, and in Bengal as *bhil-mukta*, which would appear to be a fixed rent. This is a fixed lump rental of so much grain for the holding, regardless of the varying outturn from year to year. The presumption would apply to such tenancies, if the amount of the grain-rent had been unaltered for twenty years.

When presumption arises.

In order that a Court should raise this presumption, it is not necessary that the tenure-holder or raiyat should plead in so many words that he has held his tenure or holding since the time of the Permanent Settlement. It is sufficient if he pleads and proves payment of rent at a uniform rate for twenty years, and makes no allegation inconsistent with his tenure or holding having been so held; for the Court is then bound to make the presumption in his favor (*Hem Chunder Chatterjee* v. *Poran Chunder Roy*, 3 W. R., Act X, 162; *Dhun Sing Roy* v.

Chunder Kant Mookerjee, 4 W. R., Act X, 43; *Greesh Chunder Ghose* v. *Kali Kristo Haldar*, 6 W. R., Act X, 58; *Rakhal Dass Tewari* v. *Kissoram Haldar*, 7 W. R., 242; *Poolin Behari Sen* v. *Nemy Chund*, 7 W. R., 472; *Miter Jeet Sing* v. *Toondun Sing*, 3 B. L. R., App., 88; 12 W. R., 14). But if the pleadings contain any allegation inconsistent with the tenure or holding having been held from the time of the Permanent Settlement, or if it be shown that they are held under a lease of date subsequent to the Permanent Settlement, and it is not alleged that the tenure or holding was held previous to the date of this lease, the Court cannot make the presumption (*Lutchmi Pershad* v. *Ram Golam Sing*, 2 W. R., Act X, 30; *Watson & Co.* v. *Choto Joora Mondol*, Marsh., 68; *Ram Lall Ghose* v. *Lalla Pecum Lall Dass*, Marsh., 403; *Kunda Misser* v. *Gunesh Sing*, 6 B. L. R., App., 120; 15 W. R., 193).

When presumption does not arise.

When a tenant sets up an adverse proprietary right to his landlord, he is not entitled to the benefit of this presumption (*Pandey Bishonath Roy* v. *Bhyrub Singh*, 7 W. R., 145).

Eviction will not necessarily put an end to a tenure-holder's or raiyat's holding. If the eviction be found to be unlawful and the tenant be restored to his possession, he will be restored to his original holding, if the holding would not have ceased to exist but for the eviction (*Luteefunnissa Bibi* v. *Baboo Poolin Behari Sen*, W. R., Sp. No, F. B., 91). The tenant must give strict proof of a uniform payment of rent for twenty years immediately preceding the commencement of the suit. This is a matter which should not be decided in his favor on mere inference (*Rajnarain Chowdhry* v. *Atkins*, 1 W. R., 45; *Mussamat Mahmooda Bibi* v. *Haridhan Khuleefa*, 5 W. R., Act X, 12; *Sham Lall Ghose* v. *Bhoistob Churn Majumder*, 7 W. R., 407).

Strict proof of uniform payment of rent necessary.

But it is not necessary that the tenant should prove payment of rent at a uniform rate for every year of the twenty, immediately before the institution of the suit, provided that the proof of payment extends over the twenty years (*Komol Lochun Roy* v. *Zumeeroodin Sirdar*, 7 W. R., 417; *Katyanee Dabee* v. *Soondari Dabi*, 2 W. R., Act X, 60; *Horonath Roy* v. *Chittramoni Dasi*, 3 W. R., Act X, 122; *Gobindo Kormokar* v. *Kumodnath Bhuttacharjea*, 3 W. R., Act X, 148; *Tarinikanto Lahoree* v. *Kali Mohon Surmah*, 3 W. R., Act X, 123; *Foschola* v. *Horro Chunder Bose*, 8 W. R., 284; *Rash Behary Ghose* v. *Ram Coomar Ghose*, 22 W. R., 487). Proof of uniform payment up to the date of the suit is not necessary in a case in which the landlord refuses to take rent for a few years before the suit (*Gyram Dutt* v. *Guru Churn Chatterjea*, 2 W. R., Act X, 59). It is not necessary

When not necessary.

that the tenant should show that he has paid the exact amount of rent in each year. It is not uniformity in the amount actually paid that is required to raise the presumption, but only uniformity in the rate agreed upon (*Moran & Co.* v. *Anond Chunder Majumdar*, 6 W. R., Act X, 35). It is quite possible that a raiyat may not have paid his rent regularly, in which case there would be a variation in the amount of rent as shown by the receipts. If this kind of variation were to be the test, no raiyat would be safe, and the object of the law would be frustrated (*Sham Churn Kundu* v. *Dwarkanath Kobiraj*, 19 W. R., 100). On the other hand, the amount of rent paid is not conclusive evidence of the amount of rent at which land is held, and may be rebutted by showing that the rent is greater or less (*Anondo Moyi Dassi* v. *Rani Sornomoyi*, 6 W. R., Act X, 83). To entitle a raiyat to protection from enhancement, it is necessary for him to prove, not that a uniform rate of rent has been collected, but that the rate of rent has not been varied at any time within twenty years prior to the institution of the suit (*Sham Churn Kundu* v. *Dwarkanath Kobiraj*, 19 W. R., 100; *Ahmed Ali* v. *Golam Guffoor*, 11 W. R., 432). An unexplained and immaterial variation of one anna, or of one rupee in sixty, will not affect the question of uniform payment of rent (*Monsoor Ali* v. *Bunoo Sing*, 7 W. R., 282; *Anondo Lal Chowdry* v. *Hills*, 4 W. R., Act X, 33). Nor will any trifling difference in *jumma* affect it (*Elahi Bux Chowdry* v. *Rup Chand Teli*, 7 W. R., 284; *Ramrotton Sircar* v. *Chunder Mookhee Debia*, 2 W. R., Act X, 74; *Horonath Roy* v. *Ameer Biswas*, 1 W. R., 230; *Gopal Chunder Bose* v. *Mothoora Mohun Bannerjea*, 3 W. R., Act X, 132). The change of sicca rupees into Company's rupees (the sicca rupee exceeding the Company's rupee by 1 anna 5 cowries and 1 krant) is no proof of any real change in the rate of rent (*Kali Churn Dutt* v. *Soshi Dasi*, 1 W. R., 248; *Tara Sundari Burmonya* v. *Sibeshur Chatterjea*, 6 W. R., Act X, 51; *Kattyani Debia* v. *Soondari Debia*, 2 W. R., Act X, 60; *Watson & Co.* v. *Nondo Lal Sircar*, 21 W. R., 420). The difference between Rs. 11-13 and Rs. 13-4 was, however, held sufficient to destroy the presumption of a uniform payment of rent (*Bissessur Chuckerbutty* v. *Wooma Churn Roy*, 7 W. R., 44). It may be observed that there is a slight change from the old law in the wording of this presumption. Under the old law, holding at a fixed rent gave rise to the presumption. Now, holding at a fixed rent, or fixed rate of rent, gives rise to the presumption.

Effect of variation in amounts paid.

Provided that if it is required by or under any enactment that in any local area tenancies, or any classes of tenancies, at fixed rents or rates of rent shall be registered as such on or before a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class in that local area unless the tenancy has been so registered.

This is new.

The Select Committee on the Tenancy Bill explained in their Report, presented on the 14th March, 1884, that the Local Government intended to introduce into the Bengal Council a Bill establishing a registration system of the nature referred to. If this Bill becomes law, the twenty years' presumption will cease to apply in any local area to which the Bill may apply. It will be observed that the presumption also ceases to apply to any tenancy in respect of which the particulars mentioned in sec. 102, cl. (*b*), have been recorded under the provisions of Chap. X.

(3) The operation of this section, so far as it relates to land held by a raiyat, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

This is new.

Effect of division or consolidation of holdings.

This clause is the result of numerous rulings of the High Court to this effect, which it seems unnecessary to reproduce here. We would, however, draw attention to the following: Though the mere division of a raiyat's holding among his heirs does not destroy the continuity of his holding, yet the default of one shareholder will vitiate the tenure of all, and give the landlord a right of enhancement (*Hill* v. *Besharuth Meer*, 1 W. R., 10). But the alienation of a portion of a permanent tenure by one of several co-tenure-holders will not work a forfeiture of the whole tenure (*Dassorathy Huri Chunder Mahapattra* v. *Rama Krishna Jana*, I. L. R., 9 Calc., 526). A temporary arrangement among joint owners, by which one of their number is allowed to hold a certain portion of the joint property on payment of a certain sum of money, does not convert the occupier into a raiyat

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holding at a fixed rent, or entitle him to the benefit of the presumption under sec. 4, Act X of 1859 (*Raghoobun Tewaree* v. *Bishen Dutt Dobey*, 2 W. R., Act X, 92).

(4) Nothing in this section shall apply to a tenure held for a term of years or determinable at the will of the landlord.

This is new.

51. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

Presumption as to amount of rent and conditions of holding.

Alteration of Rent on alteration of area.

52. (1) Every tenant shall—

(*a*) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to the tenure or holding of land which, having previously belonged to the tenure or holding, was lost by diluvion or otherwise without any reduction of the rent being made; and

Alteration of rent in respect of alteration in area. Sec. 17, Act X, 1859; s. 18, Act VIII, B. C., 1869.

(*b*) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

Sec. 18, Act X, 1859; s. 19, Act VIII, B. C., 1869.

The provisions of this section make a considerable change in the law. Formerly, an occupancy-raiyat could always claim abatement

Increase of rent on account of

alluvion under the old law.

on the ground of the area of his land having been diminished by diluvion or otherwise (sec. 19, Act VIII, 1869, B. C.; sec. 18, Act X, 1859). The case of diluvion was not left to fall within the case of the quantity of land being proved by measurement to be less than the quantity of land for which rent was previously paid. But the case of alluvion was not similarly provided for in the enhancement section, and it was, therefore, contended that it was not intended to fall within the case of land being proved by measurement to be more, but to be governed by cl. (1), sec. 4, Reg. XI of 1825. Hence, while a tenant could always claim abatement of rent on account of diluvion, a landlord could only assess accretions to a tenant's *jote* when he could show that he was entitled to do so by established usage or special agreement (*Jagat Chunder Dutt* v. *Panioty*, 6 W. R., Act X, 48; *Baboo Gopal Lall Thakur* v. *Kumer Ali*, 6 W. R., Act X, 85; *Juggot Chunder Dutt* v. *Panioty*, 8 W. R., 427 [in review]; 9 W. R., 379; *Ramnidhi Manjhi* v. *Parbatti Dassee*, I. L. R., 5 Calc., 823; *Brojendro Comar Bhumik* v. *Woopendro Narain Singh*, I. L. R., 8 Calc., 706; *Golam Ali Chowdry* v. *Kali Krishna Thakoor*, 8 C. L. R., 517; *Horro Sundari Dossee* v. *Gopi Sundari Dossee*, 10 C. L. R., 559). This is now changed, and the law is now made the same for both landlord and tenant, and in the case both of alluvion and diluvion. Land proved by measurement to be in excess of the area for which rent has been previously paid, evidently now includes land gained by alluvion as well as land gained in any other way, while a deficiency proved by measurement to exist in the area for which rent has been previously paid, evidently includes land lost by diluvion as well as otherwise.

Encroachment by a tenant is for benefit of his landlord.

It is to be noted that when a tenant, during his tenancy, encroaches upon the land of a third person, and holds it with his own tenure until the expiration of the tenancy, he is considered to have made the encroachment, not for his own benefit, but for that of his landlord; and if he has acquired a title against the third person by adverse possession, he has acquired for his landlord and not for himself (*Nuddyar Chand Shaha* v. *Meajan*, I. L. R., 10 Calc., 820; *Gooroo Das Roy* v. *Issur Chunder Bose*, 22 W. R., 247).

It is no longer necessary, as under the old law, to issue a notice to the tenant before suing him for additional rent on the ground of an increase in the area of the land held by him. Notices of enhancement are not required by this Act in any case, and additional rent for excess of area in the subject of the tenancy is not enhanced rent.

The provisions of the present Act with regard to abatement of rate on the ground of a diminution in the area of the holding are more favourable to tenants than the old law was; for, formerly, only a raiyat having a right of occupancy could sue for an abatement of rent on this ground (see sec. 18, Act X, 1859, and sec. 19, Act VIII, B. C., 1869). Now, any tenant can do so. It is true that Peacock, C. J., in the case of *Sheikh Enayatullah* v. *Elahi Buksh* (W. R., Sp. No., 1864, Act X, 42), held, that a tenant with or without a right of occupancy was entitled, upon principles of natural justice and equity, to an abatement of rent for land washed away, unless precluded by the terms of his kabulyat from claiming that abatement; and in *Deen Doyal Lall* v. *Mussamut Thakoor Kunwar*, 6 W. R., Act X, 24, it was held, that, in a suit for arrears of rent, a claim for abatement for land taken up by Government for the purpose of a road might be made by way of set-off. In a recent case (*Watson & Co.* v. *Nistarini Gupta*, I. L. R., 10 Calc., 544) it has been held by the High Court, that an *ijaradar*, in whose lease there was a clause stipulating that he should not be entitled to claim abatement on any ground, was yet entitled to claim abatement on account of a portion of his land having been taken up by Government for a railway, on the ground that the decrease in the area of his land was due, not to natural causes, but to *vis major*. However, the law is now quite clear, and in sec. 178, cl. (*f*), of the present Act, it is laid down that a tenant cannot contract himself out of the right to claim abatement of rent under the present section.

Abatement of rent on ground of diminution in area.

It is to be further noted that, under the present law for the acquisition of land for public purposes, a tenant is entitled both to have his rent abated as well as a share to the compensation awarded; and this applies whether he be a tenure-holder or a raiyat (*Gadadhur Dass* v. *Dhunput Sing*, I. L. R., 7 Calc., 585). The practice is now to grant abatement of rent in the same proceedings in which the compensation is apportioned. (Beverley's Land Acquisition Act, p. 63.)

If a raiyat accepts an abatement of rent, or ceases to pay rent for land submerged, he will forfeit his occupancy-rights in it. If he wishes to maintain his occupancy-rights in such land, he must continue to pay the rent (*Hemnath Dutt* v. *Ashgur Sindar*, I. L. R., 4 Calc., 894).

(2) In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

(*a*) the origin and conditions of the tenancy, for

instance, whether the rent was a consolidated rent for the entire tenure or holding ;

(*b*) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord ;

(*c*) the length of time during which the tenancy has lasted without dispute as to rent or area ; and

(*d*) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit.

(3) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure, and shall not in any case fix any rent which, under the circumstances of the case, is unfair or inequitable.

(4) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the tenure or holding bears to the previous total yearly value thereof, or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the tenure or holding.

This is new.

In this sub-section are detailed the considerations by which Courts should be guided in deciding whether an increase of area is really a ground for increase in rent or not. In the case mentioned in cl. (*a*), where the rent is a consolidated rent for the entire tenure or holding, or where the tenant has been let into occupation of land within certain

Cl. (*a*).

specified boundaries, there is no ground for holding the tenant liable to pay additional rent, even if, on measurement, it is found that the area of the land has been under-stated. The Rent Law Commission, in their Report (Vol. I, p. 142), give the following illustration of a case of this nature :—" A was let into possession of a holding in 1860 under a written lease, which describes the holding as comprising 37 bighas of land, and gives the boundaries. The land is situated in a cultivated village, and the boundaries are ascertainable and definite. In 1880, the land within these boundaries is measured and found to be 45 bighas. A is not liable to pay enhanced rent in respect of the eight additional bighas found to be within the boundaries stated in his lease."

Cl. (*d*).

It is obviously no ground for an alteration in rent that the nominal area of the land has increased owing to its being measured on a system different from that of the previous measurement. Such increase may be due to slight variations in the length of the pole, or the method of throwing it, or to the change from the rude native system of measurement to scientific measurements with chain and compass. If, when a raiyat was let into a plot of land with defined boundaries, the area was said to be a bigha, and the rent fixed at four rupees, it is obvious that to call that same field a bigha and five kottahs, because measured on a different system, and, therefore, to raise the rent to five rupees, is unfair. " What," says Sir Steuart Bayley," the Courts have to consider is, whether the entire area was really previously considered or not (Proceedings, dated 27th February, 1885, *Extra Supplement to Government of India Gazette*, March 14th, 1885, p. 58).

Sub-sec. (3).

The High Court, in a recent case, laid down that tenure-holders found to be in possession of newly-formed land, which had accreted to the original tenure, were, in the absence of special circumstances, liable to be assessed for the accreted land at the same rate as that paid for the parent tenure (*Chooramoni Dey* v. *Howrah Mills Company*, I. L. R., 11 Calc., 697). In another case, where a kabuliyat contained an agreement to pay a certain specified rent for a certain specified area, although no rate per bigha was fixed, and also an agreement to pay further rent at the rate specified for lands found, on measurement, to be in excess of the lands of which the *jumma* was fixed, it was held that the rate per bigha was the average rate of rent payable in respect of the lands for which the total amount of rent payable was fixed (*Laidley* v. *Bishu Charan Pal*, I. L. R., 11 Calc., 553).

Sub-sec. (4).

The rule prescribed in sub-sec. (4) is in accordance with the rule

laid down by the High Court in the case of *Brajanath Pal Chowdhry* v. *Hera Lal Pal* (1 B. L. R., A. C., 87; 10 W. R., 120).

The right of a tenant to claim abatement of rent, when the area of the land, the subject of his tenure, has been diminished by diluvion, passes to a purchaser on a sale of the tenure (*Kali Prasunna Rai* v. *Dhananjai Ghose*, I. L. R., 11 Calc., 625).

Payment of Rent.

Instalments of rent.

53. Subject to agreement or established usage, a money-rent payable by a tenant shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year.

This is new.

There was no provision to this effect either in Act X of 1859 or Act VIII of 1869 (B. C.) Under sec. 2 of these Acts, the instalments in which a raiyat's rent was to be paid had to be specified in his pottah. If not so specified, they were regulated by established usage (sec. 20, Act X, 1859; sec. 21, Act VIII, B. C., 1869), which meant the established usage in the pargana, and not the established usage between the parties (*Clytunno Chunder Roy* v. *Kedarnath Roy*, 14 W. R., 99). The provisions of the present section are also subject to agreement or established usage; so where it can be proved that there is a usage of paying rent by monthly instalments, this usage will prevail. The landlord cannot, however, sue for arrears oftener than once in three months (sec. 147, *post*), nor is interest recoverable for any time that may intervene between the date of the instalment and the expiration of the quarter in which it falls due (sec. 67); so that where the payment of rent by monthly instalments is established by local usage, there is practically no penalty for withholding the rent up to the end of each quarter. "Established usage," therefore, can have no effect, except where the usage is, that the rent should be payable less often than once in three months.

Time and place for payment of rent.

54. (1) Every tenant shall pay each instalment of rent before sunset of the day on which it falls due.

(2) The payment shall, except in cases where a tenant is allowed under this Act to deposit his rent, be

made at the landlord's village-office, or at such other convenient place as may be appointed in that behalf by the landlord :

Provided that the Local Government may from time to time make rules, either generally or for any specified local area, authorizing a tenant to pay his rent by postal money-order.

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This is new.

(3) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed an arrear. Sec. 20, Act X, 1859 : s 21, Act VIII B. C, 1869.

Clause (1). There was no rule on this point under the old law. The present rule is analogous to the rule as to the payment of Government revenue.

Clause (2). It is to be remembered that as a debtor has to seek out his creditor and pay what is due, so a tenant must not wait till the rent is demanded of him, but must go to his landlord and pay it on the day that it falls due (*Rani Shurut Soondari Dabya* v. *The Collector of Mymensingh*, 5 W. R., Act X, 69).

Clause (2), *Proviso.* No rule has yet been framed under this proviso. It has been considered advisable before promulgating any such rule that the experiment of permitting Government revenue to be paid by postal money-order should be tried.

Clause (3). An "arrear" under sec. 67 shall bear simple interest at the rate of 12 per cent per annum from the expiration of the quarter in which it falls due.

55. (1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly. Appropriation of payments.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

This is new.

This rule is in accordance with the provisions of secs. 59 and 60

of the Indian Contract Act (IX of 1872), and it is to be remembered that when neither debtor nor creditor makes any appropriation, under sec. 61 of the Contract Act, the payment is to be credited to the earliest debt, whether it is or is not barred by limitation. The payment of the rent of any particular year affords good *primâ facie* grounds for supposing that the rent of the previous year has been paid (*Rani Sooruth Soondaree Dabee* v. *Brôdie*, 1 W. R., 274); but it is not conclusive evidence that the rents for past years have been paid. In another case, it has been said that the payment in each year must be presumed to be for the current year till the contrary is shown; and the surplus payments must *primâ facie* be presumed to be for past, and not for subsequent, years (*Taramoni Dassee v. Kali Churn Surmah*, W. R., Sp. No., 1864, Act X, 14).

Receipts and accounts.

Tenant making payment to his landlord entitled to a receipt.

56. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

(2) The landlord shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall specify such of the several particulars shown in the form of receipt given in Schedule II to this Act as can be specified by the landlord at the time of payment:

Provided that the Local Government may, from time to time, prescribe or sanction a modified form either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

This is new.

"*Signed by landlord.*" An agent duly authorized in writing under sec. 187 (*post*) may also sign this receipt. If there be more than

one landlord, the receipt must be signed by all of them, or by their common agent (sec. 188) or common manager, if there be one appointed under sec. 95. Under cl. (*c*), art. 15 of Sched. II of Act I of 1879, receipts granted for any payment of rent by a cultivator on account of land assessed to Government revenue are exempt from stamp duty. Receipts granted by *lakhirajdars* to their tenants, if for more than Rs. 20, should, therefore, be stamped.

Clause (3). Among the particulars specified in Sched. II to be mentioned in the receipt are, it is to be observed, the tenant's name, the instalment, and the year to which each payment is credited. Under cl. (4) the omission of these particulars makes it incumbent on the Court to presume the receipt to be an acquittance in full.

Tenant entitled to full discharge or statement of account at close of year.

57. (1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, signed by the landlord.

(2) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive within three months after the end of the year a statement of account specifying the several particulars shown in the form of account given in Schedule II to this Act, or in such other form as may from time to time be prescribed by the Local Government either generally or for any particular local area or class of cases.

(3) The landlord shall prepare and retain a copy of the statement containing similar particulars.

This is new.

Penalties and fine for withholding receipts and statements of account and failing to keep counterparts.

58. (1) If a landlord without reasonable cause refuses or neglects to deliver to a tenant a receipt containing the particulars prescribed by section 56 for any rent paid by the tenant, the tenant may, within three months from the date of payment, institute a suit to recover from him

Sec. 10, Act X, 1859.
Sec. 11. Act VIII, B. C., 1869.

such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

(2) If a landlord without reasonable cause refuses or neglects to deliver to a tenant demanding the same either the receipt in full discharge or, if the tenant is not entitled to such a receipt, the statement of account for any year prescribed in section 57, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

(3) If a landlord without reasonable cause fails to prepare and retain a counterfoil or copy of a receipt or statement as required by either of the said sections, he shall be punished with fine which may extend to fifty rupees.

This is new.

Local Government to prepare forms of receipt and account.

59. (1) The Local Government shall cause to be prepared and kept for sale to landlords at all sub-divisional offices forms of receipts with counterfoils and of statements of account suitable for use under the foregoing sections.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the Local Government thinks fit.

This is new.

It is not necessary that the forms of receipt prepared and kept for sale at sub-divisions under the provisions of this section should be used, nor yet that the landlords should use printed forms of receipt; but as receipts must be in counterfoil, and as the omission of any of the particulars specified in Sched. II, which the landlord can give, will raise the presumption that a receipt which does not contain those

particulars is an acquittance in full for rent due up to date, and as the failure to prepare a counterpart or copy will render him liable to a penalty of Rs. 50 under sec. 58, cl. (3), it will probably be the safest course for landlords to use printed receipt books in the form supplied by Government for sale. Whether they use forms printed at private presses, or those sold by Government, is immaterial.

Effect of receipt by registered proprietor, manager or mortgagee.

60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876,* as proprietor, manager or mortgagee of that estate, or of his agent authorized in that behalf, shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

* VII (B.C.) of 1876.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee.

The provisions of the first portion of this clause are similar to those of sec. 79, Act VII of 1876 (B.C.), except that this clause allows the receipt of the authorized agent (sec. 187) of a proprietor, manager, or mortgagee to be a sufficient indemnity to persons paying rent to him, as well as the receipt of the proprietor, manager, or mortgagee himself. The latter portion of the first clause of this section, however, goes beyond the provisions of sec. 79, Act VII of 1876 (B. C.), and absolutely prohibits the defendant in a suit for arrears of rent brought by the proprietor, manager, or mortgagee of an estate registered under the Act from pleading that the rent is due, not to the plaintiff, but to a third person. At the same time it must be remembered, that in *Ram Kristo Dass* v. *Sheikh Harain* (I. L. R., 9 Calc., 517; 12 C. L. R., 141) it has been held by the High Court, that the mere fact of a person being registered under the provisions of Act VII of 1876 (B.C.) as proprietor of the land in respect of which he seeks to recover rent is not sufficient to entitle him to sue for it. In this case, the plaintiff, who was registered as owner of the land in respect of which he claimed rent, sued the occupier for such rent, but was only able to prove the fact that he was the registered

owner, and was unable to show that the relationship of landlord and tenant existed, or that he had a good title to the estate of which he was registered as owner. It was, accordingly, held that the suit had been rightly dismissed. Hence, if a proprietor is not registered under Act VII (B.C.) of 1876, and the defendant raises this plea, the suit must be dismissed. If he is registered, the defendant cannot plead that he is the tenant of a third person; but still the plaintiff must prove that he is the landlord of the defendant, or is entitled to collect rent from him.

Deposit of Rent.

Operation of ss. 61 to 64 postponed till 1st February, 1886.

By a Supplemental Act (XX of 1885) the operation of the provisions of secs. 61 to 64 has been postponed till the 1st February, 1886. The Act runs as follows:—

1. "Notwithstanding anything contained in the said notification:

(*a*) the provisions of sections 61 to 64, both inclusive, and of Chapter XII of the said Act, except such of those provisions as confer powers to make rules, shall come into force on such date, not later than the first day of February, 1886, as the Local Government, after the passing of this Act, may, by notification in the local official Gazette, appoint in this behalf, or, if no date is so appointed, on the first day of February, 1886, and not before;

(*b*) until those provisions come into force, the enactments specified in Schedule I annexed to the said Act shall, in so far as they relate to deposits of rent and distraint, continue in force, and all references to those provisions in other portions of the said Act shall, so far as may be, be read as if they were made to the corresponding provisions of the said enactments."

Application to deposit rent in Court.

Sec. 4, Act VI (B.C.), 1864. Sec. 46, Act VIII (B. C.), 1869.

61. (1) In any of the following cases, namely:—

(*a*) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;

(*b*) when a tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused, or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;

(*c*) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf; or

(*d*) when the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the rent,

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenure or holding an application in writing for permission to deposit in the Court the full amount of the money then due.

(2) The application shall contain a statement of the grounds on which it is made; shall state—

in cases (*a*) and (*b*), the name of the person to whose credit the deposit is to be entered,

in case (*c*), the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify, and

in case (*d*), the names of the person to whom the rent was last paid and of the person or persons now claiming it;

shall be signed and verified, in the manner prescribed in section 52 of the Code of Civil Procedure, by the tenant, or, where he is not personally cognizant of the facts of the case, by some person so cognizant; and shall be accompanied by a fee of such amount as the Local Government, from time to time, by rule, directs. XIV of 1882.

This is new.

This section makes a considerable change in the former law. Under sec. 4, Act VI of 1862 (B. C.), and sec. 46, Act VIII of 1869 (B. C), a tenant could deposit rent in Court only when he had tendered the rent to his landlord and it had been refused, and a receipt in full had not been granted. But now he can also deposit it

(1) when he has reason to believe, owing to the rent having been refused, or a receipt withheld on a previous occasion, that the landlord will not receive and grant a receipt for it (cl. *b*); (2) when he cannot obtain the joint receipt of co-sharer landlords, and they have no common agent or manager (cl. *c*); and (3) when he entertains a *bonâ fide* doubt as to who is entitled to receive the rent (cl. *d*). Further changes in the law are, that the Court receiving the deposit may now pay it away or retain it, pending the decision of a Civil Court—sec. 64, cl. (1), and may refund it to the depositor, if it is not paid away within three years' time.

Tender of rent when valid.

As to what is and what is not a valid tender of rent by a tenant, the following rulings of the High Court under the old law are important:—

A raiyat's tender of payment to be valid must be made by the recognized tenant, and at the proper place, and to a person authorized to receive the same (*Dulli Chand* v. *Meher Chand Sahoo*, 8 W. R., 138; *Esan Chunder Roy* v. *Khajah Ashanullah*, 16 W. R., 79). Tenants who have been in the habit of depositing the rent due to a landlord in his sole name are not justified, without receiving notice or order to that effect, in making the deposit in the name of that landlord and another (*Rainey* v. *Nobo Coomar Mookerjee*, 24 W. R., 128). In making the tender, a mistake in the name of the taluk is an immaterial error, especially when there is no doubt that the talukdar is aware of the tender being made (*Wooma Churn Sett* v. *Hurree Pershad Misser*, 10 W. R., 101).

Limitation in case of deposit.

When a tenant has made a deposit of rent under this section, a suit for the recovery of rent due prior to that deposited must be brought within six months of the date of the service of the notice of the deposit, instead of within three years as in other cases.—(Sched. III, Part I, art. 3.)

Deposit must be of rent due.

The deposit which is contemplated by this section is a deposit after the rents have become due. A tenant who deposited rent before it became due would not be entitled to claim the benefit of the special limitation (*Taramoni Koonwaree* v. *Jeebun Mundur*, 6 W. R., Act X, 99). Where a zemindar had sold a *patni* for arrears of rent due in 1224, Mughee, the *patnidar* sued for the reversal of the sale, and deposited the rent for 1225. The sale was reversed, and the *patnidar* then sued for the rent of 1224, and was met with the objection that the suit should have been brought within six months from the date of the deposit of the rent of 1225. But the High Court held that

this section did not apply, and that the zemindar was entitled to recover, as he had brought his suit within the three years allowed by law (*Sheikh Mohamed Shukuroollah* v. *Mussamut Romya Bibi*, 7 W. R., 487).

Stamp on application.

The application mentioned in this section must be on a court-fee stamp of the value of eight annas.—(Sched. II, art. 1, cl. (*b*), Act VII of 1870.)

Deposit must include interest.

"*The full amount of the money then due.*" This will include both the amount of rent due with, in case of a tender, the interest (if any) due thereupon at the date of the tender.

Fees on deposits.

The fee prescribed by Government under cl. (2) is four annas for every such deposit of Rs. 25 or less, with an additional four annas for every Rs. 25 or part of Rs. 25 in excess: provided that in no case shall the fee exceed the sum of Rs. 5. (See Appendix I.)

Receipt granted by Court for rent deposited to be a valid acquittance.

62. (1) If it appears to the Court to which an application is made under the last foregoing section that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

in cases (*a*) and (*b*) of the last foregoing section, by the person specified in the application as the person to whose credit the deposit was to be entered;

in case (*c*) of that section, by the co-sharers to whom the rent is due; and

in case (*d*) of that section, by the person entitled to the rent.

This is new.

Notification of receipt of deposit.

63. (1) The Court receiving the deposit shall forthwith cause to be affixed in a conspicuous place at the

Court-house a notification of the receipt thereof, containing a statement of all material particulars.

(2) If the amount of the deposit is not paid away under the next following section within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith—

in cases (*a*) and (*b*) of section 61, cause a notice of the receipt of the deposit to be served, free of charge, on the person specified in the application as the person to whose credit the deposit was to be entered ;

in case (*c*) of that section, cause a notice of the receipt of the deposit to be posted at the landlord's village-office or in some conspicuous place in the village in which the holding is situate ; and

in case (*d*) of that section, cause a like notice to be served, free of charge, on every person who it has reason to believe claims or is entitled to the deposit.

This is new.

Service of notice.

The Local Government has directed that in cases (*a*), (*b*) and (*d*) of sec. 61, the notice of the receipt of the deposit shall be served by forwarding the notice by post in a letter registered under Part III of the Indian Post Office Act, 1866, or when the Court may deem it necessary, in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure. (See Appendix I.)

Payment or refund of deposit.

64. (1) The Court may pay the amount of the deposit to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(2) The payment may, if the Local Government so direct, be made by postal money-order.

(3) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

(4) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Court receiving a deposit under the foregoing sections; but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

This is new.

Stamp on applications.

An application under cl. (1) for the payment of a deposit and an application under cl. (3) for the return of a deposit will be subject to a court-fee duty of eight annas under Sched. II, art. 1, cl. (*b*), Act VII of 1870, cl. (2).

No rule has yet been made regarding the payment of a deposit of rent by postal money-order. It has been considered advisable before promulgating such a rule that the experiment of payment of Government revenue by this means should be tried.

Arrears of Rent.

Liability to sale for arrears in case of permanent tenure, holding at fixed rates, or occupancy-holding.

65. Where a tenant is a permanent tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

This is new.

Grounds on which tenants can be ejected.

A permanent tenure-holder, a raiyat holding at fixed rates, and an occupancy-raiyat may be evicted for a breach of a condition of

his lease (consistent with this Act), on breach of which he is under the terms of a contract between him and his landlord liable to be ejected—[secs 10, 18 (*b*) and 25 (*b*).] An occupancy-raiyat may also, under sec. 25, cl. (*a*), be ejected for using his land in a manner which renders it unfit for the purposes of the tenancy. But neither a permanent tenure-holder, a raiyat holding at fixed rates, nor an occupancy-raiyat can be ejected for mere arrears of rent.

Under old law.

This is a considerable change on the old law. Under the former law, a permanent tenure-holder could be ejected for arrears of rent, if there were a condition to this effect in his lease (*Joy Durga Dabia* v. *Bolay Chand Kundu*, 2 Hay, 525; *Mohunt Boloram Dass* v. *Jogendra Nath Mullick*, 19 W. R., 349). If, however, there were no clause in the lease entitling the landlord to eject for arrears, and if by the title-deeds or the custom of the country the tenure was transferable by sale, the landlord could not eject for arrears, but could only sell the tenure under sec. 59, Act VIII of 1869, or sec. 105, Act X of 1859, and sec. 4, Act VIII of 1865, B. C. As to raiyats, under sec. 21, Act X, 1859, and sec. 22, Act VIII (B. C.), 1869, any raiyat was liable to be ejected for arrears of rent remaining due at the end of the agricultural year. But, notwithstanding the provisions of these sections, the High Court, in the case of *Kristendro Roy* v. *Aena Bewa* (I. L. R., 8 Calc., 675; 10 C. L. R., 399), held, that the provisions of sec. 59, Act VIII of 1869 (B. C.), also applied to any tenant having a transferable interest in his land, and, therefore, a landlord could not eject any such tenant for arrears of rent. But in *Fakir Chand* v. *Fouzdar Misser* (I. L. R, 10 Calc., 547), Mitter, J., expressed a doubt as to the correctness of this view.

Under present law.

But now no tenant of the three protected classes above-mentioned can be ejected on the ground of arrears of rent, even if there be a clause in his lease empowering the landlord to eject him on this ground, for, under cl. (*c*), sec. 178, a tenant cannot make a contract with his landlord entitling the latter to eject him otherwise than under the provisions of this Act.

Tenure or holding now hypothecated for rent.

"*And the rent shall be a first charge thereon.*" It has hitherto been a matter of dispute whether the tenant of a tenure transferable by sale could, or could not, deprive the landlord of his lien on it by disposing of the tenure to a third party before the landlord could bring it to sale. It was finally decided by the High Court, in *Sham Chand Kundu* v. *Brojonath Pal* (21 W. R, 94), that a tenant could not so deprive the landlord of his lien, and that the tenure itself was hypothe-

cated for the rent. The present section follows this High Court ruling, and sets this question at rest, so that now, whenever a tenure or occupancy-holding is sold, whether in execution of a decree for its own arrears, or (when it is a transferable tenure or holding) at a private sale, it is sold subject to the lien of the landlord on it for rent due at the time of the sale.

Judgment-debtor cannot purchase at sale.

Under sec. 173, the judgment-debtor cannot bid for, or purchase, a tenure or holding sold at an execution-sale held under this Act; and if he does so, and purchases the tenure or holding either directly or in the name of another, the sale can be set aside at the instance of the decree-holder.

What passes at sale.

It is to be observed that, under the present law, it is not merely the right, title and interest of the judgment-debtor that will pass at the sale: the tenure or holding itself will be sold, subject, however, under the provisions of Chap. XIV, to all "protected interests" (sec. 160) and "registered and notified incumbrances" (sec. 164). In a recent case, decided under the old law, a judgment-debtor was alone registered in the zemindar's *sherishta* as owner of a tenure, but his two brothers, who were joint in estate with him, were found to be entitled each to an equal share with him in the tenure. The judgment-debtor was, however, the manager, and he alone was sued for the arrears of rent of the tenure. A sale took place in execution of the decree for arrears of rent, and it was held to have passed the whole tenure, and not merely the interest of the judgment-debtor (*Jeo Lal Singh* v. *Gunga Pershad*, I. L. R., 10 Calc., 996: see also *Fatima Khatoon* v. *Collector of Tipperah*, 13 W. R., 433, and *Golam Chunder Dey* v. *Nuddiar Chand Adhikari*, 16 W. R., 1).

Ejectment for arrears in other cases.

66. (1) When an arrear of rent remains due from a tenant not being a permanent tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat, at the end of the Bengali year where that year prevails, or at the end of the month of Jeyt where the Faslí or Amlí year prevails, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

(2) In a suit for ejectment for an arrear of rent a

decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are paid into Court within fifteen days from the date of the decree, or, when the Court is closed on the fifteenth day, on the day upon which the Court re-opens.

(3) The Court may, for special reasons, extend the period of fifteen days mentioned in this section.

The provisions of this section make it clear that a non-occupancy and an under-raiyat can be ejected for an arrear of rent.

The fifteen days' grace mentioned in cl. (2) runs from the date of the final decree (*Radha Mohun Mundul* v. *Bukshee Begum*, Marsh., 471). The Appellate Court may extend the period of grace, as well as the Court of first instance (*Nobo Kishto Mookerjee* v. *Rameshor Gupto*, 18 W. R., 412).

Interest on arrears. Sec. 20, Act X, 1859. Sec. 21, Act VIII, B. C., 1869.

67. An arrear of rent shall bear simple interest at the rate of twelve per centum per annum from the expiration of that quarter of the agricultural year in which the instalment falls due to the institution of the suit.

Interest must be decreed.

It is no longer discretionary with a Court to decree interest on an arrear of rent or not, as it thinks fit. The language of the section is imperative. A Court must now decree interest at twelve per centum per annum on any and every arrear that may be found due; but it is to be noted that interest is only recoverable from the expiration of the quarter in which the instalment falls due, so that if the rent is payable by monthly instalments, no interest can be recovered for arrears of the first or second monthly instalment of each quarter. The provisions of this section cannot be evaded; for, under cl. (*h*), sub-sec. 3, sec. 178 (*post*), nothing in any contract made between a landlord and a tenant, *after the passing of this Act*, shall affect the provisions of this section relating to interest payable on arrears of rent. Hence, stipulations for interest at a greater or less rate than twelve per centum, for interest being payable monthly or for compound interest, contained in any contract made before the passing of this Act, are valid; but any such stipulations, contained in a contract made after

the passing of the Act, are invalid. At present, therefore, unless there be a contract to the contrary made before November 1st, 1885, interest, whether there be a contract on the subject or not, and if there be a contract, whatever its terms may be, is payable quarterly and at the simple rate of neither more nor less than 12 per centum per annum.

Power to award damages on rent withheld without reasonable cause, or to defendant improperly sued for rent. Sec 2, Act VI, B. C., 1862: s.44 Act VIII, B. C., 1869.

68. (1) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as it thinks fit.

Provided that interest shall not be decreed when damages are awarded under this section.

Sec. 3. Act VI, B C., 1862, Sec. 45. Act VIII, B. C., 1869.

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twenty-five per centum on the whole amount claimed by the plaintiff, as it thinks fit.

Produce-rents.

Order for appraising or dividing produce.

69. (1) Where rent is taken by appraisement or division of the produce,—

(*a*) if either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the appraisement or division, or

(*b*) if there is a dispute about the quantity, value or division of the produce,

the Collector may, on the application of either party, and on his depositing such sum on account of expenses as the Collector may require, make an order appointing

such officer as he thinks fit to appraise or divide the produce.

(2) The Collector may, without such an application make the like order in any case where, in the opinion of the District or Sub-divisional Magistrate, the making of the order would be likely to prevent a breach of the peace.

(3) Where a Collector makes an order under this section, he may, by order, prohibit the removal of the produce until the appraisement or division has been effected.

This is new.

Systems of appraising or dividing produce current in Behar.

"*Where rent is taken by appraisement or division of the produce.*" The practice of paying rent in kind is chiefly prevalent in South Behar, There are two systems of produce-rents in force in Behar—(1) the *Agore Batai* system, under which the crop is actually divided, and the landlord's share made over to him; and (2) the *Bhaoli* or *Danabundi* system, under which the raiyat agrees to pay the landlord the market value of a certain proportion of the produce; the crop is valued at each harvest, and the rent is paid in money according to this valuation. The mode of dividing the produce, *i.e.*, of paying the produce-rent under these systems, has been described by the Commissioner of Patna in a letter No. 1130 of 21st August, 1858, addressed to Secretary to Board of Revenue, as follows: Under the *Agore Batai* system—"The landlord employs men," it is said, "to watch his share of the crop when it approaches maturity, and when it is ready, cuts and carries it himself. In a more common variety of the same tenure, the crop is cut and threshed by the raiyat under the superintendence of the zemindar's servants, and the produce divided on the threshing-floor; but it is also matter of arrangement between the parties in this case, whether the landlord shall have the straw or only the grain, and whether it shall be delivered at the threshing-floor of the raiyat's village, or at some other place more convenient to the zemindar."

The *Agore Batai* system.

The *Bhaoli* or *Danabundi* system.

Under the *Bhaoli* or *Danabundi* system, it is said, "when the crop is ripe, the *patwari*, the *gomastha*, the *amin*, a *jareebkush* or measurer, a *salis* or arbitrator, a *navisinda* or writer," and the *jet* raiyats (head raiyats) "of the village, with the raiyat himself, proceed to the field in which the crop is growing. The *salis* first makes an estimate of the produce, the *amin* then makes another. If the two estimates

agree, the matter is considered settled. If they differ, the raiyat cuts a cottah where the crop is thinnest; the zemindar's people cut another where it is heaviest. The produce is threshed out, mixed together, and weighed, and the produce of the whole field is estimated from this sample A memorandum of the result, called a *Danabundi* is made out by the *patwari* and his writer, and signed by those present. The raiyat is then at liberty to cut and store his grain. The *patwari* next prepares a paper called a 'Behree' showing the amount of grain in the possession of the raiyat, and the respective shares of the *malik* and the raiyat, and sends for the *malik's* share, which the raiyat either pays in grain or money, as may have been agreed upon. If the agreement is to pay in money, the *gomastha* writes to the *amlah* of the surrounding villages for the *nirik* or market rate, which is returned on the back of his letter, and an average is then struck. It will thus be seen the accounts of the estimate of the crop, and its weighment form the chief evidence in these *Bhaoli* cases, and that a *jamawasil* account is of comparatively little use."

This latter system (*i.e.*, the *Bhaoli* or *Danabundi* system) is stated to have led to abuses; the raiyat being often prohibited from cutting the crop until he agreed to the landlord's appraisement of the produce, and if he continued recusant, the crop was in many cases allowed to rot in the ground. The provisions of this section are intended to put an end to such abuses.

BENGAL SECRETARIAT

Procedure where officer appointed.

70. (1) When a Collector appoints an officer under the last foregoing section, the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selection of those assessors (if any), and the procedure to be followed in making the appraisement or division; and the officer shall conform to the instructions so given.

(2) The officer shall, before making an appraisement or division, give notice to the landlord and tenant of the time and place at which the appraisement or division will be made; but if either the landlord or the tenant fails to

attend either personally or by agent, he may proceed *ex-parte.*

(3) When the officer has made the appraisement or division, he shall submit a report of his proceedings to the Collector.

(4) The Collector shall consider the report, and, after giving the parties an opportunity of being heard, and making such enquiry (if any), as he may think necessary, shall pass such order thereon as he thinks just.

(5) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but, subject as aforesaid, his order shall be final and shall, on application to a Civil Court by the landlord or the tenant, be enforceable as a decree.

(6) Where the officer makes an appraisement, the appraisement papers shall be filed in the Collector's office.

This is new.

Rights and liabilities as to possession of crop.

71. (1) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(2) Where rent is taken by division of the produce, the tenant shall be entitled to the exclusive possession of the whole produce until it is divided, but shall not be entitled to remove any portion of the produce from the threshing-floor at such a time or in such a manner, as to prevent the due division thereof at the proper time.

(3) In either case, the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord.

(4) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time,

the produce shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest.

This is new.

The tenant is now entitled to exclusive possession of crop.

The old law made no special provision regarding the possession of the crop, where rent was payable in kind, and the consequence was that it has sometimes been held that neither the landlord nor the raiyat alone could cut or remove the crop without the consent of both. The High Court, however, held the raiyat could cut the crop, tender to the landlord what he deemed to be his due share and remove the rest. If the landlord refused to take delivery of the share tendered, the raiyat might allow it to remain in the threshing-floor. In practice, however, the raiyat was not allowed to cut the crop without the landlord's consent.

This section gives the raiyat the right to the exclusive possession of the crop under both the *Agore Batai* and the *Bhaoli* systems of produce-rents. He is also entitled to cut and harvest the produce, while the interests of the landlord are duly protected by the provisions of sub-sec. (4).

Liability for rent on change of landlord or after transfer of tenure or holding.

Tenant not liable to transferee of landlord's interest for rent paid to former landlord, without notice of the transfer.

72. (1) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the tenant.

(2) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants published in the prescribed manner, shall be a sufficient notice for the purposes of this section.

This is new.

Apportionment of rent.

This section deals only with the case of the transfer of the whole of a landlord's interest to a single transferee. It is silent as to the

cases of the transfer of a share only of his interest, of the transfer of the whole of his interest to more than one transferee, and of the division of his interest amongst different co-sharers. When the subject of the transfer or division is a revenue-paying estate, which can be partitioned by metes and bounds, the "Estates Partition Act 1876" (VIII, B. C.), provides rules for the apportionment of the rent of the tenants, whose lands fall partly within one share and partly within another. But there are no similar rules applicable, when revenue-free land, or a tenure or under-tenure in revenue-paying land is partially transferred to more than one transferee, or has to be divided between co-sharers. In all these cases, it is necessary to apportion the tenant's rent, and the question of the liability of the tenant for the rent to the transferee, or transferees, and co-sharers arises. There can be no doubt that, as the law now stands, the tenant cannot be compelled to pay his rent proportionately to different persons without a regular civil suit for the apportionment of his rent being brought against him. But it has hitherto been held that on such a suit being brought, his rent will be apportioned, and will become payable proportionately to the transferee, transferees, or co-sharers, as the case may be. There is a long series of High Court Rulings to this effect. One of the earliest of these is the case of *Bani Madhab Ghose* v. *Thakoor Doss Mondol* (B. L. R., F. B., 588), in which Peacock, C. J., said—"It appears that the tenant originally held under four brothers, of whom Gobind Monee's husband, Sree Krishen, was one. They were a joint family, and the tenant was paying rent to them jointly. I should have thought myself, though it is unnecessary to express any decision upon the point, that when rent is received by a joint family, the tenant is not liable to be sued by each member of the joint family for a separate share of the rent. But if the estate is severed by partition, and, instead of being a joint estate, becomes separate estates, then the rent would be apportioned in respect of the several allotments, and each member would be entitled to sue for his separate share of the rent in respect of the lands allotted to him on partition." Another early case in which the question of apportionment of rent was dealt with, is that of *Gopanund Jah* v. *Lalla Gobind Pershad* (12 W. R., 109), in which it was said that when a lessee was evicted from part of his land, by a title paramount to that of his lessor, an apportionment of the rent might take place. The next case is that of *Sreenath Chunder Chowdhry* v. *Mahesh Chunder Bandopadhya* (1 C. L. R., 453), in which seven mouzas had been let in *patni* to certain tenants by the

zemindar, and then, under a decree against the zemindar, three of these mouzas were sold to A, and the other four to B. A then brought a suit against the *patnidars* to have his share of the rent apportioned, making B, purchaser of the other mouzas, a party to the suit, and it was held that the suit was properly brought. Then, in the case of *Annoda Churn Roy* v. *Kally Coomar Roy* (I. L. R., 4 Calc., 89), the Court (Garth, C. J., and McDonell, J.) said—"If *ijmali* property is let to a tenant at one entire rent, we think it clear upon principle and authority, that the rent is due in its entirety to all the co-sharers, and that all are bound to sue for it; and that no co-sharers can sue to recover the amount of his share separately, whether the other co-sharers are made parties to the suit or not. Of course, if the land demised ceases to be *ijmali*, and one portion of the divided area becomes the property of A, whilst another becomes the property of B, it is necessary that an apportionment of the rent should take place, and then, in order to obtain such an apportionment, it would be quite proper that either A or B should bring a suit against the tenant for so much of the rent as he considers his proper portion, making B or A, as the case may be, defendant to the suit. But here there has been no division of the area of the property. The area is entire, the rent has always been paid by the tenant in its entirety, and the title of the other co-sharers remains *ijmali*." It was accordingly held in this case, that the suit would not lie. Recently, in the case of *Ishwar Chunder Dutt* v. *Ram Krishna Dass* (I. L. R., 5 Calc., 902), the law on this point was settled by a Full Bench, by whom it was said "that a sale of a share in a tenure, which has been let out to a tenant in its entirety, does not of itself necessarily effect a severance of the tenure or an apportionment of the rent, but if the purchaser of the share desires to have such a severance or apportionment, he is entitled to enforce it by taking proper steps for that purpose. If he takes no such steps, then the tenant is justified in paying the entire rent, as before, to all the parties jointly entitled to it. But if the purchaser desires to effect a severance of the tenure, and an apportionment of the rent, he must give the tenant due notice to that effect, and, then, if an amicable arrangement of the rent cannot be made by arrangement between all the parties concerned, the purchaser may bring a suit against the tenant for the purpose of having the rent apportioned, making all the other co-sharers parties to the suit." "It is impossible upon principle," it is further said, "to distinguish cases, when a tenure is sold

privately, from those when it is sold by public auction; or, on the other hand, to distinguish cases, when a tenure is severed by different portions of its area being sold to different persons, from those when it is sold to different persons in undivided shares. In all cases of this kind, the entirety of the joint interest should be considered as severable at the option of the purchaser, and it would lead to most inconvenient results, and to the depreciation of the property thus sold in different lots, if the purchasers of such lots were compelled to collect their rents in one entire sum conjointly with one another, or with the owner of the unsold shares or portions."

There is a further case, *viz.*, *Durga Persad* v. *Ghosita Goria* (I. L. R., 11 Calc., 284), which has been very recently decided, which relates to this subject. In this case the plaintiff held a *jote* under the defendants, and their co-sharers, who were jointly in possession of an estate paying revenue to Government. In the year 1877, the estate was partitioned and out of the lands held by the plaintiff, a plot measuring about fifteen cottahs, was allotted to the defendants as their share. It was not disputed that the rent payable in respect of the land was at the rate of Rs. 4 per bigha. After the partition the defendants enforced a payment from the plaintiff of Rs. 5 odd on account of the land held by him, which formed the shares allotted to them on the partition. The plaintiff therefore instituted the suit, nominally under the provisions of sec. 19 of Act VIII, B. C., of 1869, for abatement of rent, and for a declaration that he was only bound to pay rent at the rate of Rs. 4 per bigha for the amount of land held by him. It was held in this case that it was not properly a suit for abatement of rent, but a suit for apportionment of rent, and for a declaration that after *butwará*, the share of the rent which the plaintiff was liable to pay to the defendant was, as stated in the plaint.

It is, however, doubtful whether a purchaser of a share of a landlord's interest can now enforce an apportionment of rent even by means of a civil suit. By sec. 188 (*post*), it is provided that when two or more persons are joint-landlords, everything, which the landlord is under this Act required or authorized to do, must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them. It would therefore seem as if it were only when the subject of the transfer is a share of a revenue-paying estate, and when a partition is made with regard to it under the Estates Partition Act (VIII, B. C., of 1876), that rent can now be apportioned, and that no apportionment of rent of revenue-free land

or of a tenure or under-tenure in a revenue-paying estate can now be enforced, even by a civil suit.

As to the transfer of arrears of rent due before the transfer of the landlord's interest, see secs. 131 and 132 of the Transfer of Property Act, IV of 1882.

The mode of serving the general notice referred to in cl. (2) has been prescribed by the Local Government, and the rule on this subject will be found in Appendix I.

Service of general notice.

73. When an occupancy-raiyat transfers his holding without the consent of the landlord, the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent accruing due after the transfer, unless and until notice of the transfer is given to the landlord in the prescribed manner.

Liability for rent after transfer of occupancy-holding.

This is new.

The provisions of this section, no doubt, apply only to occupancy-raiyats whose rights are transferable by custom. The case of permanent tenures is, of course, provided for in secs. 12 to 16 (*ante*), but there is no provision made, either in this section or elsewhere, for the case of tenures which are not permanent and of other transferable tenancies, if there be any, being transferred without notice to the landlord. In such cases the landlord will, upon general principles, not be affected by a transfer of which he has had no notice, and the transferor will continue liable to him for the rent. Under sec. 88 (*post*), a tenant cannot transfer a share of his tenancy, or make any apportionment of the rent thereof, so as to bind the landlord without his consent in writing

Rules regarding the notice of transfer referred to in the section have been framed by the Local Government, and will be found in Appendix I.

Service of notice.

Illegal cesses, &c.

74. All impositions upon tenants under the denomination of *abwâb*, *mahtut* or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

Abwâb, &c., illegal. Secs. 54 & 55, Reg. VIII, 1793; s. 3, Reg. V, 1812; s. 9. Reg. VII, 1822; s. 10, Act X, 1859; s. 11, Act VIII, 1869, B. C.

By secs. 54 and 55, Reg. VIII of 1793, all *abwâbs* or cesses then existing were to be consolidated into one specific sum, and the imposition of any fresh *abwâb* or *mahtut*, under any pretences whatever,

All Abwábs now illegal.

was made punishable by a penalty equal to three times the amount imposed Sec. 3, Reg. V of 1812, declared that nothing therein contained should be construed as sanctioning or legalizing the imposition of arbitrary or indefinite cesses, whether under the denomination of *abwáb*, *mahtut*, or any other denomination. Acts X of 1859 and VIII (B C.) of 1869 prohibited the exaction of any sum in excess of the rent specified in the tenant's pottah. The High Court, however, has not always adhered strictly to these provisions, as will be seen on reference to the cases of *Orjoon Sahoo* v. *Anund Singh* (10 W. R., 257), *Jeeatoollah Paramanick* v. *Jogendro Narain Roy* (22 W. R., 12), *Budhna Orawan Mahtoon* v. *Jemadar Baboo Juggeshor Doyal Sing* (24 W. R., 4), *The Serajgunge Jute Co., Ld.*, v. *Torabdee Akoond* (25 W. R., 252), *Mahomed Fayez Chowdry* v. *Jamoo Gazee* (I. L. R., 8 Calc., 730). But by a recent Full Bench decision (*Chultan Mahton* v. *Tilukdari Singh*, I. L. R., 11 Calc., 175), the High Court has decided, that *abwábs* cannot be recovered, even though they existed before the time of the Permanent Settlement, and though, by the custom of the estate, the raiyats, and their ancestors before them, have, for a great number of years, paid such *abwábs*. In this case, Garth, C. J., said :— "I consider that the Regulation of 1793, as well as the Rent Law of 1859, intended to put an end to the *abwáb* system and to render them illegal. It has been argued that to abolish this system is contrary to the wishes of both landlords and raiyats, and I believe that to be true. Landlords often find it a convenient means of enhancing their rents in an irregular way, and the raiyats, as a rule, would far rather submit to pay *abwábs* than have their *assul* rent increased. But the system appears to me to be clearly illegal, and I consider that the Civil Courts should do their best to put an end to it." Mitter, J., in the same case observed: "Under the provisions of the Regulations and Acts cited above, it seems to me that a contract for the payment of *abwábs* is unlawful, and is not enforceable by law. It has been contended before us that a claim for the recovery of the *abwábs* existing before the Permanent Settlement is enforceable, notwithstanding these provisions, because sec. 54 of Reg. VIII of 1793 contained only a direction for the consolidation of the *abwábs* with the *assul jama*, but no penalty was attached to an omission on the part of the landholders to act according to that direction. But it seems to me that this contention is not correct, because sec. 61 of the said Regulation, in my opinion, provided the penalty in question, that penalty being the non-suiting of the claim for the recovery of the *abwábs*."

This Full Bench decision must be regarded as setting aside all previous rulings to the contrary effect. The provisions of the present section and this Full Bench decision now leave no room for dispute as to the state of the law on the subject of *abwábs* and impositions upon tenants in addition to the actual rent.

Penalty for exaction by landlord from tenant of sum in excess of the rent payable.

75. Every tenant from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent lawfully payable, may, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit not exceeding two hundred rupees; or, when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value.

Sec. 10. Act X, 1859: s. 11, Act VIII. B. C., 1869.

"*Special enactment for the time being in force.*" The Cess Act (IX of 1880, B. C.), the Bengal Embankment Act (II of 1882, B. C), and the Bengal Survey Act (V of 1875, B. C.) make certain sums recoverable as "rent." Under secs. 10, Act X of 1859, and 11, Act VIII B. C., of 1869, the tenant was entitled to recover damages not exceeding double the amount exacted.

Meaning of "exacted."

As to the meaning of the word "exacted," it would seem that it does not necessarily imply the use of force, or a show of force, or threats. In *Ram Pershad Vogut* v. *Ramtohul Singh* (Marsh., 655), where the zemindar, after granting a thika lease, collected the rents direct from the raiyats, and the amount so received exceeded the rent due from the thikadar, the excess amount so collected was held to be an exaction. But when a zemindar collected an excessive amount under a proceeding prescribed by law, it was held that this was not an illegal exaction of rent (*Chunder Monee Chowderani* v. *Debendronath Roy Chowdry* (Marsh., 420; 2 Hay's Rep., 519), and where on the allegation that the defendant had sublet land to him for the purpose of raising crops under a contract to share the produce between them, the plaintiff, a *burghadar*, sought to recover the value of his share of the crop, which

the defendant had misappropriated, it was held that the claim was not for a sum exacted in excess of the rent (*Goreeboollah Paramanik* v. *Fukeer Mahomed Kholco*, 10 W. R., 203).

Distinction between "lawfully payable" and "lawfully recoverable."

It is only when the sum exacted is in excess of the rent "lawfully payable" that the landlord renders himself liable to the provisions of this section. He would, therefore, appear not necessarily to render himself liable to any penalty for collecting from his tenant an amount not "lawfully recoverable," provided the amount was lawfully payable. Thus, though a proprietor, who has not filed a return required under the Cess Act, IX of 1880, is not entitled to recover rent, yet the rent may be lawfully payable to him; and similarly, when a raiyat collects from his under-raiyat an amount of rent in excess of the limits laid down in cls. (*a*) and (*b*) of sec. 48, he would seem not necessarily to render himself amenable to the provisions of this section, as an amount in excess of the limits is not said to be not lawfully payable, but merely to be not lawfully recoverable.

CHAPTER IX.

Miscellaneous Provisions as to Landlords and Tenants.

Improvements.

Definition of "improvement."

76. (1) For the purposes of this Act, the term "improvement," used with reference to a raiyat's holding, shall mean any work which adds to the value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

(2) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section :—

(*a*) the construction of wells, tanks, water-channels, and other works for the storage, supply or distribution of water for the purposes of agri-

culture, or for the use of men and cattle employed in agriculture ;

(*b*) the preparation of land for irrigation ;

(*c*) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable ;

(*d*) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes ;

(*e*) the renewal or re-construction of any of the foregoing works, or alterations therein or additions thereto ; and

(*f*) the erection of a suitable dwelling-house for the raiyat and his family, together with all necessary out-offices.

(3) But no work executed by the raiyat of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property.

This is new.

Right to make improvements in case of holding at fixed rates and occupancy-holding.

77. (1) Where a raiyat holds at fixed rates or has an occupancy-right in his holding, neither the raiyat nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

(2) If both the raiyat and his landlord wish to make the same improvement, the raiyat shall have the prior right to make it, unless it affects another holding or other holdings under the same landlord.

This is new.

Collector to decide question as to right to make improvement, &c.

78. If a question arises between the raiyat and his landlord—

(*a*) as to the right to make an improvement, or

(*b*) as to whether a particular work is an improvement,

the Collector may, on the application of either party, decide the question, and his decision shall be final.

This is new.

Right to make improvements in case of non-occupancy-holding.

79. (1) A non-occupancy-raiyat shall be entitled to construct, maintain and repair a well for the irrigation of his holding, with all works incidental thereto, and to erect a suitable dwelling-house for himself and his family, with all necessary out-offices; but shall not, except as aforesaid and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's permission.

(2) A non-occupancy-raiyat who would, but for the want of his landlord's permission, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver, or cause to be delivered, to his landlord a request in writing calling upon him to make the improvement within a reasonable time; and, if the landlord is unable or neglects to comply with that request, may make the improvement himself.

This is new.

Registration of landlord's improvements.

80. (1) A landlord may, by application to such Revenue-officer as the Local Government may appoint, register any improvement which he has lawfully made or which has been lawfully made at his expense or which he has assisted a tenant in making.

(2) The application shall be in such form, shall contain such information, and shall be verified in such

manner, by local inquiry or otherwise, as the Local Government from time to time by rule directs.

(3) The officer receiving the application may reject it if it has not been made within twelve months—

(*a*) in the case of improvements made before the commencement of this Act — from the commencement of this Act ;

(*b*) in the case of improvements made after the commencement of this Act—from the date of the completion of the work.

An enhancement of rent on the ground of a landlord's improvement cannot be granted by a Court, unless the improvement is registered under this section. (See sec. 33, *ante.*) It is to be observed that all that this section authorizes is the registration of the fact that an improvement has been lawfully made by the applicant or at his expense. It does not render necessary or authorize any inquiry as to the cost of the improvement, or the probable benefit that may be expected from it. The registration removes a disability to sue for enhancement on the ground of the improvement, under which the landlord would lie, under the terms of sec. 33, if the improvement had not been registered; but the registration will not in itself be evidence of the value or cost of the improvement, or of the amount of enhancement, which may be properly awarded on account of it. If the landlord desires to have evidence of such matters recorded, he must proceed under the next section (81).

"*Lawfully made.*" These words render it necessary that the work to be registered must be an improvement within the meaning of sec. 26. A dwelling-house, which is not suitable to the holding, may not be an improvement under the terms of that section, and in that case cannot apparently be registered.

Rules under this section have been framed by the Local Government, and will be found in Appendix I.

Application to record evidence as to improvement.

81. (1) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon, at a time and place of which

notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in every subsequent proceedings between the landlord and tenant or any persons claiming under them.

This is new.

It is to be noticed that while the preceding section removes a disability under which the landlord would otherwise lie, this section enables him or his tenants, if he or they may so desire, to have contemporaneous evidence of improvements recorded, and the evidence so recorded will be admissible in subsequent proceedings between the landlord and tenant. The Local Government has provided that the Revenue-officer recording evidence under this section shall have the powers of a Civil Court in the trial of suits, and shall be guided by the provisions of secs. 182 and 184 of the Civil Procedure Code. (See Appendix I.)

Compensation for raiyat's improvements.

82. (1) Every raiyat who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been paid.

(2) Whenever a Court makes a decree or order for the ejectment of a raiyat, it shall determine the amount of compensation (if any) due under this section to the raiyat for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the raiyat.

(3) No compensation under this section for an improvement shall be claimable where the raiyat has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial

advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a raiyat between the 2nd day of March, 1883, and the commencement of this Act shall be deemed to have been made in accordance with this Act.

This is new.

A raiyat, on adducing proof that he made the improvement, will be entitled to compensation under cl. (1) of this section, and it will lie on the landlord to establish by evidence that the case comes under any of the exceptions mentioned in this section, namely, that compensation has already been paid, that the improvement was made in pursuance of a contract, or under a lease, binding the raiyat, in consideration of some substantial advantage, to make the improvement without compensation, and that he has obtained the advantage.

The 2nd March, 1883, is the date on which the motion was made in Council for leave to introduce the Bengal Tenancy Bill.

(5) The Local Government may, from time to time, by notification in the official Gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

No rules regarding assessors made.

No rules have yet been made by the Local Government requiring the Court to associate with itself assessors, and determining their qualifications and the mode of selecting them. It has been said in the Report of the Committee appointed to draft the rules under this Act:—"It is hoped that cases of ejectment will be rare. It is probable, too, that the amount of compensation awardable in such cases will not ordinarily be very large. It seems a matter of some difficulty to specify in a rule the qualifications of persons whose assistance would be useful to the Court; and we are unwilling to add to the costs of the trial by prescribing a procedure, which would involve an

expenditure incommensurate with the amount of the compensation. If it should be proved hereafter that the Courts experience a practical difficulty in the decision of these cases, and express a wish for the appointment of assessors, the question of making a rule may be further considered." (*Calcutta Gazette*, November 4th, 1885.)

Principle on which compensation is to be estimated.

83. (1) In estimating the compensation to be awarded under the last foregoing section for an improvement, regard shall be had—

(*a*) to the amount by which the value, or the produce, of the holding, or the value of that produce, is increased by the improvement;

(*b*) to the condition of the improvement, and the probable duration of its effects;

(*c*) to the labour and capital required for the making of such an improvement;

(*d*) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvement; and

(*e*) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent.

(2) When the amount of the compensation has been assessed, the Court may, if the landlord and raiyat agree, direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

This is new.

Effect of ss. 76 to 83.

The effect of secs. 76 to 83, which are taken generally from the North-West Provinces Rent Act (XII of 1881), and are new in Bengal, is, that where a landlord makes an improvement and registers it, he will generally be entitled to reap the benefit of it in the shape of an enhancement of rent. But he may not in every case reap the full benefit of an improvement effected by him; for, under sec. 33, sub-sec. (*b*), cl. (iv), a Court has discretion to refuse an enhancement on the ground that the rent is already so high as not to permit of further enhancement. When

a raiyat makes an improvement, he will, if ejected, be entitled, subject to certain exceptions, to receive compensation for it. An occupancy-raiyat will further, while he continues to hold his land, reap the benefit of his improvement, inasmuch as his rent cannot, under Chap. V, be enhanced on account of an improvement made by him. A non-occupancy-raiyat, under similar circumstances, may possibly not be able, in all cases, to retain the full benefit of his improvement, but the check placed on the landlord by the provisions of Chap. VIII will, as a rule, protect him in the enjoyment of that benefit.

Advances for the purpose of making agricultural improvements can be obtained by raiyats and landlords under the Land Improvement Loans Act (XIX of 1883). The facts that tenants are now entitled to the benefit of improvements made at their expense, and that loans for the purpose of making improvements can be obtained on easy terms, should give a great stimulus to agricultural improvements; but the experience of other provinces, where compensation for improvement has been allowed by law for some years, does not afford ground for the hope that these sections will, in the immediate future, have much practical effect.

The Legislature has laid down no hard-and-fast rule by which the amount of compensation to be given for improvements is to be awarded. In this, as in many of other matters, it has prescribed certain considerations by which the Courts are to be guided, and to which they are to have regard, without defining the precise value to be attached to each or any of those considerations. No rule seems to be possible in such matters, and every case will, probably, have to be decided on its own merits. The amount of compensation will, probably, depend, in each case, on what it would cost the landlord, supposing the improvement had not been executed, to put the holding in the condition in which he receives it from the raiyat.

It is to be noted that, under cl. (*d*), sub-sec. (8), sec. 178 (*post*), nothing in any contract between a landlord and a tenant made before or after the passing of this Act shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

Acquisition of land for building and other purposes.

84. A Civil Court may, on the application of the landlord of a holding, Acquisition of land for building and other purposes.

and on being satisfied that he is desirous of acquiring

the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground, or for any religious, educational, or charitable purpose,

and on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient,

authorise the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant.

This is new.

The necessity of this provision was, the Select Committee remarked, "strongly urged upon them, especially with a view to provide building-sites, either for new tenants, or in cases of diluvion." The Collector's certificate as to the sufficiency of the reason is intended to guard against the abuse of the section.

Sub-letting.

Restrictions on sub-letting.

85. (1) If a raiyat sub-lets otherwise than by a registered instrument, the sub-lease shall not be valid against his landlord unless made with the landlord's consent.

(2) A sub-lease by a raiyat shall not be admitted to registration if it purports to create a term exceeding nine years.

(3) Where a raiyat has, without the consent of his landlord, granted a sub-lease by an instrument registered before the commencement of this Act, the sub-lease shall not be valid for more than nine years from the commencement of this Act.

Under the old law, a raiyat having a right of occupancy might sublet it, and he did not thereby incur any forfeiture of his rights

(*Kali Kishore Chatterjee* v. *Ram Churn Saha*, 9 W. R., 344; *Haran Chunder Pal* v. *Mookta Sundaree*, 10 W. R., 113; 1 B. L. R., A. C., 81; *Khosal Mahomed* v. *Joynooddeen*, 12 W. R., 451). But he could not, and cannot now, by subletting, alter the character of his holding and convert it into an under-tenure (*Karoo Lall Thakoor* v. *Luchmeeput Doogur*, 7 W. R., 16; *Hureehur Mookerjee* v. *Jadoonath Ghose*, 7 W. R., 114). If a man took a lease of land, and at once sublet it, he was held under the old law to be a tenure-holder (*Ram Mungul Ghose* v. *Lukhi Narain Saha*, 1 W. R., 71); but if he acquired a right of occupancy by cultivating or holding, he did not divest himself of this right by subletting the land (*Durga Prosonno Ghose* v. *Kali Das Dutt*, 9 C. L. R., 449). But a man would not now be held to be a tenure-holder merely because he sublets. If he was let into the land for the purpose of cultivating it himself, he would be a raiyat, whether he at once sublet it or not.

The lease which the occupancy-raiyat granted was only binding as between him and his lessee. It was not binding against his superior landlord (*i.e.*, tenure-holder or proprietor), and did not affect any legal right, which the latter might possess, though if the superior landlord dispossessed the under-raiyat without the assistance of the law, he was guilty of trespass (*Dumree Sheikh* v. *Bisseswar Lall*, 13 W. R., 291).

It is to be observed that, under the provisions of the present section, the right of subletting is not restricted to occupancy-raiyats. All raiyats have now the right of subletting their lands. All raiyats may sublet.

As to the acquisition by under-raiyats of occupancy-rights as against raiyat-landlords, and as to the transferability of their rights without their raiyat-landlords' consent, see the note to sec. 49 (*ante*).

It is to be noted that under the proviso (2) to sec. 121 (*post*), a landlord cannot distrain the crop of any part of a holding which the tenant has sublet with the landlord's written consent; and that, under cl. (5), sec. 136 (*post*), a landlord shall not be deemed to have consented to his tenant's subletting the holding, or any part thereof, merely by reason of his having received an amount deposited by an inferior tenant to release his property from distraint. Further, in sec. 138 (*post*), it is provided, that when land is sublet, and any conflict arises between the rights of a superior and of an inferior landlord, who distrain the same property (that is, in cases in which the subletting has taken place without the superior landlord's consent, in which cases only can he distrain), the right of the superior landlord will prevail.

Under the provisions of cl. (*c*), sub-sec. (3), sec. 178 (*post*), nothing contained in any contract made after the passing of this Act can take away the right of an occupancy-raiyat to sublet, subject to and in accordance with the provisions of this Act.

Surrender and abandonment.

Surrender.

86. (1) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding.

Sec. 19, Act X, 1859. Sec. 20, Act VIII, B.C., 1869.

(2) But, notwithstanding the surrender, the raiyat shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(3) When a raiyat has surrendered his holding, the Court shall, in the following cases for the purposes of sub-section (2) presume, until the contrary is shown, that such notice was so given, namely,—

(*a*) if the raiyat takes a new holding in the same village from the same landlord during the agricultural year next following the surrender;

(*b*) if the raiyat ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

This is new.

(4) The raiyat may, if he thinks fit, cause the notice to be served through the Civil Court within the jurisdiction of which the holding or any portion of it is situate.

(5) When a raiyat has surrendered his holding, the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(6) When a holding is subject to an incumbrance secured by a registered instrument, the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer.

This is new.

(7) Save as provided in the last foregoing sub-section, nothing in this section shall affect any arrangement by which a raiyat and his landlord may arrange for a surrender of the whole or a part of the holding.

Under the former law, any raiyat who desired to relinquish the land held or cultivated by him could do so provided he gave due notice in writing of his intention at least three months before the expiry of the agricultural year. But it was necessary that notice to the landlord should be followed by relinquishment. Mere proof of notice of relinquishment, without proof of actual relinquishment, did not protect the raiyat from liability for rent (*Nobeen Chunder Roy Surmah* v. *Luckee Prea Debee*, 1 W. R., 20); and mere relinquishment of the land did not excuse him from payment of rent, if he was otherwise liable, unless he made terms with his landlord (*Cazee Syud Mahomed Azmul* v. *Chundee Lal Pandey*, 7 W. R., 250). But if, in this case, the landlord let the land to other raiyats, the original tenant could not be held liable for the rent (*Mahomed Ghazee* v. *Shunker Lall*, 11 W. R., 53). Abandoning the land, and neither cultivating nor paying rent for it, was held to be tantamount to relinquishment, and the raiyat could not, in such circumstances, demand to be reinstated in possession on the ground that he had never formally relinquished the land (*Mooneeroodeen* v. *Mahomed Ali*, 6 W. R., 67; *Nuddear Chand Poddar* v. *Modhoosoodan Dey Poddar*, 7 W. R., 153; *Haro Doss* v. *Gobind Bhuttacharjee*, 3 B. L. R., App., 123; 12 W. R., 304; *Mutty Soonur* v. *Gundur Soonur*, 20 W. R., 129; *Ram Chung* v. *Gora Chand Chung*, 24 W. R., 344; *Boidinath Maji Koiburto* v. *Aupurna Dabee*, 10 C. L. R., 15; *Golam Ali Mundul* v. *Golap Soondary Dossee*, I. L. R., 8 Calc., 612; 10 C. L. R., 499); but abandonment is now distinguished from relinquishment or surrender, and is dealt with in the following section.

Part of holding cannot be surrendered.

The former law did not allow the raiyat to relinquish a part of his holding, and it was therefore held that, as long as he retained possession of any part of his *jote*, he was liable for the rent of the whole (*Saroda Soondaree Debee* v. *Hajee Mahomed Mundul*, 15 W R, Act X, 78).

From the terms of cl. (7) of this section, it is evident that, under the present law also, the raiyat cannot surrender a part of his holding without the consent of his landlord.

Notice of surrender, and how it may be served.

The raiyat may serve the notice of his intention to surrender under cl. 2 personally in writing, but where he serves it through the Civil Court, under the provisions of cl. (4), it will be served as a summons on a defendant under the Code of Civil Procedure, and be subject to the same process-fee. (See Chap. V of the Rules framed by Government under the Bengal Tenancy Act, Appendix I.)

Under cl. (12), sec. 19, Act VII of 1870, applications for service of notices of relinquishment are exempt from court-fees.

Protection against collusive surrender.

Clause (6) is intended to protect sub-lessees against collusive surrender,—the term "incumbrance" under sec. 161 (*post*) meaning, when used in reference to a tenancy, "any lien, sub-tenancy, easement, or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in sec. 160." Under the former law it was held, that when a tenant, who held land for a term, sublet that land, he parted with his own interest therein to the extent of the interest created by the sub-lease, and consequently he could not determine the interest of his under-tenant by surrendering his own term to the landlord (*Heeramonee* v. *Ganganarain Roy*, 10 W. R., 384). From the terms of cl. (6), however, it would appear that a raiyat, by surrendering his holding to the landlord, can always determine his sub-lessee's interests in the land, unless they have protected themselves by registering their sub-leases. This is an important point, for it is a growing practice in Behar for indigo planters to sub-lease land from raiyats, paying them a bonus and an annual rent. If such sub-tenants do not protect themselves by registering their sub-leases, they may find themselves, through the surrender of their holdings by their raiyat-landlords, deprived of both their land and their money.

This section applies only to raiyats

It is further to be noticed that the provisions of this section apply only to raiyats, *i.e.*, to occupancy or non-occupancy-raiyats. It is also only a "holding," which can be surrendered, and the term "holding" is applicable only to the interest of a "raiyat." Hence it would appear that the provisions of this section do not apply to under-raiyats, nor yet to tenure-holders. As to the latter, no change is made in this respect on the former law, for, in *Heera Lall Pal* v. *Neelmonee Pal* (20 W. R., 383), it was held that it was not open to a patnidar, of his own choice, to throw up his patni, and by so doing escape from his

liability to pay rent. The contract, though not indissoluble, it was said, could only be dissolved by an act of the Court, and after proper enquiry. Again in *Jadunath Ghose* v. *Schoene, Kilburn & Co.* (I. L. R., 9 Calc., 671 ; 12 C. L. R., 343) it was laid down, that a tenure under a *dar-maurosi mokurari* lease of land, which was not let for agricultural purposes, could not be put an end to by mere relinquishment on the part of the lessee, even after notice to the landlord. In this case it was further held by Field, J., that the principle laid down in *Heera Lall Pal* v. *Nilmonee Pal*, that a patnidar could not, of his own option, relinquish his tenure, was applicable to all intermediate tenures, other than farming leases between the zemindar and cultivator of the soil.

It is to be noted that, under the provisions of cl. (c), sub-sec. (3), sec. 178 (*post*), no raiyat can, after the passing of this Act, contract himself out of the provisions of this section.

Abandonment.

87. (1) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

This is new.

(2) Before a landlord enters under this section, he shall file a notice in the prescribed form in the Collector's office, stating that he has treated the holding as abandoned, and is about to enter on it accordingly ; and the Collector shall cause a notice to be published in such manner as the Local Government by rule directs.

(3) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-

raiyat, six months, from the date of the publication of the notice ; and thereupon the Court may, on being satisfied that the raiyat did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as to the Court may seem just.

(4) Where the whole or part of a holding has been sublet by a registered instrument, the landlord shall, before entering under this section on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the raiyat who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that raiyat. If the sub-lessee refuses or neglects within a reasonable time to accept the offer, the landlord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself as provided in sub-sections (1) and (2).

The provisions of this section are intended, it has been said, "to meet the difficulties which occur when a raiyat apparently abandons his holding, but in such circumstances as to give no assurance whether it has been permanently abandoned or not. On the one hand, there is the danger to the landlord of an action for dispossession, if he lets the land hastily to a new tenant," and the provisions of cl. (1) are intended to guard against the danger. "On the other hand, there is the danger of temporary absence being taken advantage of by the landlord to effect the dispossession of a raiyat" (*Government of India Gazette*, March 14th, 1885, Suppt., p. 60). This is guarded against by the provisions of cl. (2), and a special remedy, in case of dispossession actually taking place, is provided by cl. (3).

Protection against collusive abandonment.

Clause (4) is intended to protect under-raiyats against collusion between the landlord and their raiyat-lessor. It is herein provided that a landlord shall not be entitled to avoid a sub-lease until "the sub-lessee has had the opportunity of taking over for the unexpired period of his sub-lease the full rights and liabilities of his lessor in regard to the rent of his entire holding." But it is only registered

sub-leases that are so protected. Further, it seems doubtful whether the provisions of this clause will effectually protect sub-lessees against the collusion in question. For, when the lessor-raiyat absconds, the landlord can call upon the sub-lessee to pay all arrears of rent which he alleges are due from the raiyat, and the sub-lessee must either pay whatever sum the landlord demands, or let him avoid his sub-lease. There would seem to be no check upon the landlord, if his demand be confined to three years' rent, for *ex hypothesi*, the only person other than landlord who knows what is really due (*viz.*, the raiyat-lessor) has either absconded, or is in collusion with the landlord.

Effect of non-payment of rent.

It is to be observed that, though non-payment of rent does not necessarily cause a forfeiture of a raiyat's rights, unless he has abandoned his land (*Musyat Oolla* v. *Noorzahan*, I. L. R., 9 Calc., 808; 12 C. L. R., 389), yet it is a matter to which great weight is always attached, when the question as to whether a raiyat has really intended to abandon his holding or not has to be decided, and in the case of *Hemnath Dutt* v. *Ashgur Sindar* (I. L. R., 4 Calc., 894), non-payment of the rent of land, which was submerged for a number of years, was regarded as evidence of an intention to abandon it, and to have caused the forfeiture of all occupancy-rights in it. But under secs. 18 and 31 of the N.-W. P. Rent Act, 1881, an occupancy-tenancy subsists, notwithstanding the submergence of the land (*Kupil Rai* v. *Radha Pershad*, I. L. R., 5 Alla., 260).

When an occupancy-raiyat, after transfer of his right to a stranger, takes a sub-lease from him, and so remains in possession, this will not amount to abandonment so as to entitle the landlord to re-enter (*Srishteedhur Biswas* v. *Mudan Sirdar*, I. L. R., 9 Calc., 648).

Form of notice.

The form of notice prescribed under cl. (2) and the rule made by the Local Government for its service will be found in Appendix I.

Sub-division of Tenancy.

Division of tenancy not binding on landlord without his consent. Sec. 27, Act X. 1859. Sec. 26. Act VIII, B C., 1869.

88. A division of a tenure or holding, or distribution of the rent payable in respect thereof, shall not be binding on the landlord unless it is made with his consent in writing.

This makes no change on the former law, under which no division or distribution of rent was valid and binding without the consent in writing of the zemindar or superior tenant. There are, however,

some cases, which appear to substitute consent by conduct for the written consent expressly required by sec. 26, Act VIII of 1869. (See *Horeemohun Mookerjee* v. *Gora Chand Mitter*, 2 W. R., Act X, 25; *Nobo Kishen Mookerjee* v. *Sree Ram Roy*, 15 W. R., 255.) But in *Gour Mohan Roy* v. *Anund Mundul* (22 W. R., 295), it was said that the fact of some of the joint occupiers of a joint tenure paying portions of the rent due from all, corresponding with the shares for which the joint-occupiers are liable, cannot prevent the zemindars from suing them all, or making them all answerable for the joint debt. And in *Rani Lalun Monee* v. *Sona Monee Dabee* (22 W. R., 334), it was held that if certain tenures, alleged to be separate tenures, had been indissolubly connected at the time of the original holder of them, and that the zemindars in receiving rent from the holders of them had dealt with them only as the representatives of the original owner, and as payers of component parts of the aggregate rent, then this would go to show that there was really but one tenure, and its division, and the distribution of its rental, would not be binding against the zemindars.

Even when occupancy-rights are transferable by custom, the division of a tenure or holding, or distribution of the rent payable in respect thereof, will not be lawful; and if the tenant subdivides and transfers to different persons, the landlord is entitled to treat the transferees as trespassers and to re-enter (*Tirthanund Thakoor* v. *Mutty Lall Misser*, I. L. R., 3 Calc., 774).

Ejectment.

No ejectment except in execution of decree. Sec. 21, Act X, 1859. Sec. 22, Act VIII, B. C., 1869.

89. No tenant shall be ejected from his tenure or holding except in execution of a decree.

As the interest of an "under-raiyat" is not a "holding" (see sec. 3, cl. 9) there is room for dispute as to whether this section applies to an under-raiyat or not. It was, however, probably intended so to apply. Under the former law, it was only a raiyat having a right of occupancy, or one holding under a pottah the term of which had not expired, who could not be ejected otherwise than in execution of a decree. The liability of a tenure-holder to ejectment was to be determined by the conditions of his lease (*Mohunt Buloram Dass* v. *Jogendro Nath Mullick*, 19 W. R., 349). A non-occupancy raiyat, or a tenant for a term, holding on after the expiry of the term, could always be ejected by the landlord after the service on him of a reasonable notice to quit.

If a tenant is ejected otherwise than in execution of a decree, he can recover possession by bringing a suit under sec. 9, Act I of 1877 (the Specific Relief Act), within six months from the date of ejectment. But such a suit cannot be brought against Government. If, however, the tenant allows six months to elapse without bringing a suit under the Specific Relief Act, it would appear that an occupancy-raiyat will be able to sue for possession within two years' time under art. 3, Sched. II of this Act. An occupancy-raiyat unduly dispossessed by the landlord has also, under sec. 87 of this Act, the same time, and a non-occupancy-raiyat has, in similar circumstances, six months from the date of publication of the landlord's notice, prescribed by cl. 2 of the section, within which to sue for recovery of possession. But there is no provision in this Act for a tenure-holder, a raiyat holding at fixed rates, or a non-occupancy-raiyat suing to recover possession of a tenure or holding, from which he has been dispossessed otherwise than in execution of a decree. Tenants of these classes, therefore, if they have failed to avail themselves of the remedy afforded them by the Specific Relief Act, must, in such circumstances, sue under the provisions of the Limitation Act, XIV of 1877, and prove their title before they can recover possession. The period of limitation applicable to them will be twelve years under art. 142, Sched. II. Occupancy-raiyats will also, when they seek to recover possession on the strength of their title, have twelve years to sue in under the same article, notwithstanding the provisions of sec. 6 of the Limitation Act; for, in the case of *Joyunti Dasi* v. *Mohamed Ally Khan* (I. L. R., 9 Calc., 423), it has been held that the limitation provisions of sec. 27, Bengal Act VIII of 1869, have no application to a case in which the plaintiff relies on his title, and seeks to recover possession on the strength of that title. (See note to art. 3, Sched. III.)

Remedies for illegal ejectment.

Under cl. (*c*), sub-sec. (1), sec. 178 (*post*), nothing contained in any contract made either before or after the passing of this Act shall entitle any landlord to eject a tenant otherwise than in accordance with the provisions of this Act.

Measurements.

90. (1) Subject to the provisions of this section and any contract, a landlord may, by himself, or by any person authorized by him in this behalf, enter on and measure all land comprised in his estate or tenure, other than land exempt from the payment of revenue.

Landlord's right to measure land.

Sec. 9, Act VI, B.C., 1862. Sec. 25, Act VIII, B.C., 1869.

(2) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in ten years, except in the following cases (namely) :—

(*a*) where the area of the tenure or holding is liable, by reason of alluvion or diluvion, to vary from year to year, and the rent payable depends on the area ;

This is new.

(*b*) where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation ;

(*c*) where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

(3) The ten years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act.

Lakhiraj land can be measured.

Formerly, a landlord had no right to measure *lakhiraj* land, and a rent-free-holder might, in virtue of a grant of ten bighas, be holding double as much or more. Now, the landlord can measure all the lands of his estate, whether rent-free or not, provided it be revenue-paying.

The landlord of a revenue-free property apparently not entitled to measure it.

"*Other than land exempt from payment of revenue.*" Under sec. 3, cl. (1) of this Act, "land exempt from the payment of revenue" is an estate. It would appear from the wording of this section that the landlord of such an estate is not entitled to measure it. This is not apparently what was intended. What would seem to have been intended was, that the landlord of an estate within which revenue-free land is situated should not be entitled to measure such revenue-free land; but is entitled to measure rent-free land situated within his estate. In other words, he is entitled to measure all lands comprised in his estate not forming in themselves a separate estate, whether such be rent-paying or rent-free; but he is not entitled to measure revenue-free land comprised within the external boundaries of his estate, for such revenue-free lands form a separate estate. But if this be so, the

wording of the section does not appear to express the intention of the framers of the Act. As the section now stands, the owner of a revenue-free estate has not *himself* the power to measure it, while the intention of the framers of the Act, no doubt, was to debar, not the owner himself, but some other person, from measuring it.

A part-proprietor of an estate was competent, under sec. 38 of Bengal Act VIII of 1869, to apply for measurement of its lands after making the remaining proprietors parties to the proceedings (*Abdool Hossein* v. *Lall Chand Mohtan Dass*, I. L. R., 10 Calc., 36). But he cannot do so now, for, under the provisions of sec. 188 (*post*), anything which the landlord is by this Act required or authorized to do must, when two or more persons are joint landlords, be done either by all these persons acting together, or by an agent authorized to act on behalf of both or all of them. It can also be done on their behalf by a common manager appointed under sec. 95 (*post*).

Clause (*b*) of this section allows the landlord to measure *utbandi* (sec. 180) or other holdings, in which the area under cultivation varies from year to year, as often as he may wish, and also permits the annual measurements, which are necessary where the *bhaoli* system prevails.

Power for Court to order tenant to attend and point out boundaries.

Sec. 9, Act VI, B. C., 1862.

Sec. 37, Act VIII, B. C., 1869.

91. (1) Where a landlord desires to measure any land which he is entitled to measure under the last foregoing section, the Civil Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land.

(2) If the tenant refuses or neglects to comply with the order, a map or other record of the boundaries and measurements of the land, prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

Under the former law, if a tenant, after the issue of an order enjoining his attendance, neglected to attend and point out his land, it was not competent to him to contest the correctness of the measurement made, or any of the proceedings held in his absence. However, in a recent case, *Alimuddi* v. *Kali Krishna Tagore* (I. L. R., 10 Calc., 895), a superior owner of chur land and his tenants, who held in *howladari* tenure, had agreed, with reference to alluvion and

diluvion, that the chur should be measured from time to time on notice, and that, unless the tenants should give a separate *daul kabulyat* for the land found to be accreted, the superior landlord should take possession of it. In pursuance of this agreement, a measurement was made by the superior landlord, but incorrectly. The tenants, however, raised no objection at the time; but subsequently, when a suit was brought against them by the superior owner for possession of the accreted land, they set up the defence that the measurement had been made in their absence and was incorrect. But it was held that they could not defeat the suit merely on the ground of the incorrectness of the measurement, there being no fraud, but that they were entitled to ask the Court to decide what the amount of the property was which the plaintiff was entitled to recover.

The terms of the present section are in accordance with the principle of the above decision, for it substitutes a disputable or rebuttable presumption, for the conclusive or absolute one, raised by the former law, which the High Court in the above decision virtually set aside.

For circumstances to be considered in determining the amount of alteration in rent allowable in consequence of alteration in area shown by measurement; see sec. 52, *ante*.

Standard of measurement.

92. (1) Every measurement of land made by order of a Civil Court, or of a Revenue-officer, in any suit or proceeding between a landlord and tenant, shall be made by the acre, unless the Court or Revenue-officer directs that it be made by any other specified standard.

(2) If the rights of the parties are regulated by any local measure other than the acre, the acre shall be converted into the local measure for the purposes of the suit or proceeding.

(3) The Local Government may, after local enquiry, make rules declaring for any local area the standard or standards of measurement locally in use in that area, and every declaration so made shall be presumed to be correct until the contrary is shown.

This is new.

The rules for the conduct of surveys under Chap. X of this Act will be found in Appendix I.

Board of Revenue's directions regarding Mozufferpore cadastral survey.

In the experimental cadastral survey now being made in certain portions of the district of Mozufferpore, the measurement of village boundaries is being made by the Survey Department with the Gunter's chain, and the total area of the village will be calculated in acres, but the measurement of fields and internal plots is being made with a chain graduated according to the pargana *laggi*. The area of holdings thus ascertained is to be converted into bighas according to the village standard, where that standard differs from the pargana *laggi*. The plan of having the external boundaries of villages measured with the Gunter's chain, and the total area ascertained in acres, while the internal plots or fields are measured with a chain graduated according to the local standard, will, it is thought, be found to be the most generally convenient one; because, while making it feasible to prepare the maps so as to fit in with those of other parts of the country, it will also enable the raiyats and landlords to follow and understand the measurements, as they proceed.

Measurements under Act VIII. B. C., 1869.

The measurements under Act VIII (B.C.) of 1869 had to be made according to the standard pole of measurement of the pargana (sec. 41), and in case of dispute it was held, that the Collector, being the depository of the standard pole of each pargana, it was exclusively within his province to determine which was the standard of each pole (*Taruknath Mookerjee* v. *Meydee Biswas*, 5 W. R., Act X, 17); but this ruling was set aside by subsequent decisions of the High Court, and the Civil Courts had to decide the question of standard in each case. Under the present law, the Local Government may, after local enquiry, make rules declaring the standard or standards of measurements locally in use in any local area, but no rules under cl. (3) have yet been made. The preparation of such rules requires careful consideration and local enquiry.

Local standards of measurement.

In some districts like Chittagong, the term 'bigha' is almost unknown. Measurements are made by the local standard of *kanies* and *droons*, and the *droon* in one part of the district is four times the size of the *droon* in another. In the greater part of Manbhoom, no standard of land-measurement is recognised; land being there let according to "*rekhs*" or "*kunies*," or according to "*kats*." The "*rekh*" is properly the sixteenth part of the village area, but in practice is often more. The "*kat*" is an area according to quantity of seed sown, and ought to be about three bighas. In Bengal, the standard bigha contains 14,400 square feet. In Behar, the bigha varies in different districts, in different parganas of

the same district, in different villages of the same pargana, and sometimes even in different estates in the same village, and may be anything from a third of an acre to an acre and a half or more. The bigha is a measure, in every case, of twenty *laggies* in length by twenty *laggies* in breadth, but the *laggi* may contain any number of *haths*, or nominal cubits, from four up to nine or more. Not only is the varying number of *haths* to the *laggi* an element of uncertainty, but the length of the *hath* itself is not a fixed entity. Nominally, the *hath* is a cubit of eighteen inches, but in practice its length is determined by the length of a particular individual's forearm; so that it is not uncommon in Behar to find a landlord and tenant disputing at the very outset of a measurement over the selection of the individual whose arm is to be taken as the standard *hath*. It would be well for those whose duty it is to settle fair rents, or to decide how far an alteration in rent is equitably claimable, because of alteration in nominal area, to bear these facts in mind. It is often argued that if a tenant had agreed to pay so much per bigha of land at some former time, and it is afterwards found by measurement that he is actually holding a bigha and a quarter, it is obviously just that his rent should be proportionately increased. It would, no doubt, be so, if a bigha were a mathematically defined area, but this it ordinarily is not. If A let to B a definite plot of land ten years since, and, according to the rude system of measurement above described, called it a bigha, and C, now taking A's place, remeasures the same plot, and, according to an equally vague, or it may be more accurate system, calls the same plot a bigha and a quarter, it is obvious that the mere change in nomenclature would not be an equitable ground for increasing the rent; nor, in the contrary case, for reducing it. The great variety in the lengths of local standards of measurement is, it is believed, due, like the existence of numerous *abwabs*, to the aversion on the part of people of the country to changing established rates. If an enhancement is unavoidable, raiyats will pay the increased amount demanded, by way of *abwabs* or *kharchas*, much more willingly than by way of an increased rate of rent. On the other hand, if a zemindar is, from failure of crops, deterioration of lands, absconding of tenants, or other cause, obliged to give an abatement of rent, instead of reducing the rate per bigha he prefers by increasing the length of the *laggi* to give more land in the nominal bigha, thus leaving the rates unchanged. The *laggi*, or pargana pole, which is sometimes found to be deposited in the Collector's office, cannot then be accepted as conclusive, or, indeed, any proof of the length of the

Alteration in nominal area.

standard of measurement now current in a particular village, neither can the revenue survey or *Thakbust* maps be so accepted. At best these would afford some indication of what was supposed to be the standard prevailing when the revenue survey was made.

It will be in the power of a Court or Revenue-officer under the latter part of cl. (1) to direct that the measurement be made by any such standard as may be specified in the order for measurement.

Managers.

Power to call upon co-owners to show cause why they should not appoint a common manager. Secs. 26 and 27, Reg. V of 1812.

93. When any dispute exists between co-owners of an estate or tenure as to the management thereof, and in consequence there has ensued, or is likely to ensue,

(*a*) inconvenience to the public, or

(*b*) injury to private rights,

the District Judge may, on the application in case (*a*) of the Collector, and in case (*b*) of any one having an interest in the estate or tenure, direct a notice to be served on all the co-owners, calling on them to show cause why they should not appoint a common manager :

Provided that a co-owner of an estate or tenure shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is a co-owner of an estate, unless his name and the extent of his interest are registered under the Land Registration Act, 1876. VII (B. C.) of 1876.

The rights of co-owners under the Act are dealt with in sec. 188 (*post*). This section only applies to cases in which there is such a dispute between co-owners as is likely to lead to inconvenience to the public or injury to private rights, in which case a common manager may be appointed by the District Judge. The provisions of this and of the two following sections make no change in the law with regard to the appointment of managers of estates. The law on this point in regard to estates has been substantially as in these sections from times anterior to the Permanent Settlement. In the 22nd paragraph of the Code of Regulations, relative to the Decennial Settlement (Colebrooke's Supplement, p. 318), provision is made

for managers in joint estates. The provision was re-enacted in secs. 26 and 27, Reg. V of 1812, and extended in Reg. V of 1827. Act XVI of 1874 repealed the procedure provided by Reg. V of 1827, but not secs. 26 and 27 of Reg. V of 1812. Reg. V of 1812, therefore, remained inoperative. The present Act repeals the sections of Reg. V of 1812 remaining in force, and in secs. 93 to 100 re-enacts them, and provides a procedure for giving effect to them. The extension of these provisions to tenures is, however, a modification of the law, and the proviso is of course new.

Power to order them to appoint a manager if cause is not shown.

94. If the co-owners fail to show cause as aforesaid within one month after service of a notice under the last foregoing section, the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served on any co-owner who did not appear before it was made.

This is new.

Power to appoint manager if order is not obeyed.

95. If the co-owners do not, within such period, not being less than one month after the making of an order under the last foregoing section, as the District Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time,—

(*a*) direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards consents to undertake the management thereof; or

(*b*) in any case appoint a manager.

This is new.

96. The Local Government may nominate a person for any local area to manage all estates and tenures within that local area for which it may be necessary to appoint a manager under clause (*b*) of the last foregoing section; and, when any person has been so nominated, no other person shall be appointed manager under that clause by the District Judge, unless in the case of any estate the Judge thinks fit to appoint one of the co-owners themselves as manager.

Power to nominate person to act in all cases under cl. (*b*) of last section.

This is new.

97. In any case in which the Court of Wards undertakes under section 95 the management of an estate or tenure, so much of the provisions of the Court of Wards Act,* 1879, as relates to the management of immoveable property, shall apply to the management.

The Court of Wards Act, 1879, applicable to management by Court of Wards.

*IX (B. C.) of 1879.

This is new.

98. (1) A manager appointed under section 95 may, if the District Judge thinks fit, be remunerated by a fixed salary or percentage of the money collected by him as manager, or partly in one way and partly in the other, as the District Judge from time to time directs.

Provisions applicable to manager.

(2) He shall give such security for the proper discharge of his duties as the District Judge directs.

(3) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might but for his appointment have exercised, and the co-owners shall not exercise any such power.

(4) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(5) He shall keep regular accounts, and allow the

co-owners or any of them to inspect and take copies of those accounts.

(6) He shall pass his accounts at such period and in such form as the District Judge may direct.

(7) He may make any application which the proprietors could make under section 103.

(8) He shall be removable by the order of the District Judge, and not otherwise.

This is new.

Power to restore management to co-owners.

99. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 95, the District Judge may at any time direct that the management of it be restored to the co-owners, if he is satisfied that the management will be conducted by them without convenience to the public or injury to private rights.

This is new.

Power to make rules

100. The High Court may, from time to time, make rules defining the powers and duties of managers under the foregoing sections.

This is new.

CHAPTER X.

Record-of-Rights and Settlement of Rent.

The provisions of this chapter authorise the Local Government, with the previous sanction of the Governor-General in Council in any case and without such sanction in certain specified cases, to make an order directing that a survey and record-of-rights be made in any local area.

Aims and objects of survey and record-of-rights.

The Government of India, in their despatch to Her Majesty's Secretary of State for India, No. 6 of the 21st of March, 1882, para. 100, describe the aims and objects and the advantages of a survey and record-of rights to be—firstly, that it will, by putting an

end to the uncertainty which promotes rent-disputes, efficiently protect the raiyats, while enabling the landlords to realise their just dues with greater facility; and secondly, that it will afford improved knowledge of the facts of rural economy. "Where," they remarked, "local officers possess a full and accurate knowledge of local facts, "and where they are, therefore, able to pursue a vigorous method "of administration, these advantages are very commonly due to their "being supplied with information reaching to the detail of every field, "and to the existence of numerous and disciplined bodies of subordi-"nate native officials, who are able to collect the various particulars "within their cognisance as materials to suggest fairly safe generalisa-"tions. Whether we have regard to the prevention of famine, or to the "waste of life or waste of money which may directly result from official "ignorance or uncertainty as to the approach or dimensions of famine; "whether we look to the need for active administration, which shall "search out and expose deep-seated evils, or to the lack of some solid "assurance that facts affecting agricultural interests shall be so notori-"ous and indisputable that none shall be able to pervert them to the "injury of the weak, we perceive, in the circumstances of many portions "of Bengal, and particularly of Behar, strong reasons for placing the "Bengal officials on a level, in point of administrative advantages, with "their brother officers in other provinces. We seek no fiscal advantage, "but the prevention or diminution of human suffering."

The Secretary of State, in para. 19 of his despatch, No. 54, dated 17th August, 1882, observed, in reply, that, while fully admitting the advantages which would attend the establishment of village records and accounts, the formation of a record-of-rights, and the introduction of a field-survey, he could not avoid the apprehension that the difficulties of carrying out these measures in those parts of Bengal in which village accounts and accountants, if they ever existed, had long ago entirely disappeared, might prove greater than was anticipated, but he sanctioned an experimental commencement of the work in the Patna Division of the province of Behar.

Procedure for survey and record-of-rights as originally proposed.

Accordingly, this chapter, the provisions of which are new in Bengal, was introduced, and deals with the procedure for the preparation of a record-of-rights and settlement of rents. "As the Bill originally stood, these processes were separate, and were provided for in separate chapters. The Revenue-officer undertaking a record-of-rights had no power to settle rents, nor to decide disputes. He had only to record what he found to be the existing facts of each holding, and the entries

in such a record were to be presumed to be correct, till the contrary was proved. This process, however, was to be supplemented by another called the settlement of rents."

Procedure prescribed by Act.

It is not necessary to describe the successive steps by which this proposed procedure was altered. It is sufficient to explain the procedure as it stands at present, which is as follows:—"What has been done has been to give the Revenue-officer, in the first instance, power to settle all disputes that may come before him. Where no dispute arises, and it does not appear that the tenant is holding land in excess of, or less than, that for which he is paying rent, the Revenue-officer will record what he finds, he will not alter rents, and his entries will only have a presumptive value in cases afterwards brought before the Courts; where a dispute arises, or it appears that the tenant is holding land in excess of, or less than, that for which he is paying rent, the Revenue-officer will decide the dispute or settle a fair rent of his own motion, as the case may be, on the same grounds, by the same rules, and with the same procedure as a Civil Court. His decision will be liable to appeal, like the ordinary Civil Court, to a Special Judge, who may or may not be the Judge of the district, and will be subject to a further special appeal to the High Court. In appeal, the High Court may settle a new rent; but, in so doing, is to be guided by the other rents shown in the rent-roll. In other words, there can be no second appeal to the High Court merely on the ground that the rent has been pitched too high or too low; but if a second appeal is preferred, as it may be, on the ground that the Special Judge, owing to some error on a point of law, has, for example, found the holding to comprise more land or less land than it actually does comprise, or has given the raiyat a wrong status, and the appellant succeeds, the High Court can, without altering the rates, reduce or increase the rent, as the case may be. The decision of the Revenue-officer in disputed cases and when he settles a fair rent will, subject to these appeals, have the effect of a judgment of the Civil Court, and will be *res judicata*, thus barring a fresh suit for enhancement for 15 years."

This chapter applies to settlements.

The provisions of this chapter will apply to settlements of rents for the purpose of settling land-revenue, as well as to settlement of rents in private estates, and now that Act VIII (B. C.) of 1879 is repealed, will ordinarily be the only procedure at the disposal of Government for that purpose. The repeal of Act VIII (B. C.) of 1879, however, leaves Government the same powers, in addition to those

given by this chapter, as regards settlement of land-revenue, as distinguished from the settlement of raiyats' rents, as it held before that Act was passed, so that Government may now proceed if it think fit, under the old Settlement Regulations, for the purpose of determining the amount of Government revenue, which it may think proper to demand, without having recourse to this chapter, but raiyats' rents cannot be enhanced or reduced under those Regulations. If Government wishes to settle raiyats' rents, and not merely to ascertain existing rents, the only procedure open to it is that contained in this chapter, and if it elect to proceed under the provisions of this chapter, fair rents must be settled for all tenants where a settlement of land-revenue is being made in respect of the local area.

Importance of the rules under this chapter.

The rules under this chapter, which will be found in Appendix I, "are," remarked the Committee appointed to consider the rules under the Act, "of great importance, as they will not only apply to the survey and record-of-rights about to be taken in hand in Mozufferpore, but will also, in the majority of cases, form a code of instructions for the guidance of officers engaged in making settlements of land-revenue in any of the districts to which the Act extends. The instructions contained in the Board's rules will be supplementary to the rules under the Act, it being manifestly impossible to frame the latter in such detail as to form a complete manual for the guidance of officers in every particular." The rules declare that all orders of Revenue-officers, passed in the discharge of any duty under the Act, shall be subject to the supervision and control of the Board of Revenue; and that the orders of each Revenue-officer shall be subject to the supervision and control of the Revenue-officer to whom the Board may declare him to be subordinate. It will be seen, on reference to the rules for guidance of Revenue-officers acting under this chapter, that a record-of-rights and settlement of rents embraces a record of the character and extent of the interests of proprietors and proprietary mortgagees,—of the character and extent of the interests of tenure-holders and undertenure-holders,—of the area of the holding and of the rent payable by every raiyat and under-raiyat,—and of the status of every raiyat and under-raiyat; also the determination of proprietors' private lands and the settlement of fair rents on the application of either landlord or tenant, or without such application on the motion of the Revenue-officer himself, when it appears that the tenant is holding land in excess of, or less than, that for which he is paying rent.

The settlement law of Bengal is now contained in Regulations VII of 1822, IX of 1825, and IX of 1833, supplemented by this chapter, the rules framed under it, and the instructions of the Board of Revenue relating to settlements.

Power to order survey and preparation of record-of-rights.

101. (1) The Local Government may, in any case with the previous sanction of the Governor-General in Council, and may, if it thinks fit, without such sanction in any of the cases next hereinafter mentioned, make an order directing that a survey be made, and a record-of-rights be prepared, in respect of the lands in a local area by a Revenue-officer.

(2) The cases in which an order may be made under this section without the previous sanction of the Governor-General in Council, are the following (namely) :—

(*a*) where the landlord or a large proportion of the landlords or of the tenants applies for such an order and deposits, or gives security for such amount, for the payment of expenses, as the Local Government directs ;

(*b*) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally ;

(*c*) where the local area is comprised in an estate or tenure which belongs to or is managed by the Government or the Court of Wards ; and

(*d*) where a settlement of revenue is being made in respect of the local area.

(3) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

In the *Calcutta Gazette* of the 4th November, 1885, was published the following notification under this section, directing that a survey and record-of-rights be made of Pargana Gudesswar and Tuppehs Chukla Nye and Butsalch of the Mozufferpore District.

Government Notification regarding cadastral survey in Mozufferpore.

"Under the powers conferred upon him by sec. 101 (1) of the Bengal Tenancy Act, VIII of 1885, and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor is pleased to order that a survey shall be made, and a record-of-rights prepared, in respect of all lands included within the external boundaries of Pargana Gudesswar and Tuppehs Chukla Nye and Butsalch in the district of Mozufferpore.

"The particulars to be recorded in the survey and record-of-rights shall be the following :—

"The name of each proprietor, with the character and extent of his interest;

"The situation, quantity, and boundaries of proprietor's private lands, as defined in Chapter XI of the Act;

"The name of each tenant;

"The class to which he belongs; that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;

"The situation, quantity, and boundaries of the land held by him;

"The name of his landlord;

"The rent payable;

"The mode in which that rent has been fixed, whether by contract, by order of a Court, or otherwise;

"If the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;

"The special conditions, and incidents, if any, of the tenancy."

Particulars to be recorded.

102. Where an order is made under the last foregoing section, the particulars to be recorded shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the following, namely :—

(*a*) the name of each tenant ;

(*b*) the class to which he belongs; that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;

(*c*) the situation, quantity and boundaries of the land held by him;

(*d*) the name of his landlord;

(*e*) the rent payable;

(*f*) the mode in which that rent has been fixed, whether by contract, by order of a Court, or otherwise;

(*g*) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;

(*h*) the special conditions and incidents, if any, of the tenancy.

Power for Revenue-officer to record particulars on application of proprietor or tenure-holder.

103. On the application of a proprietor or tenure-holder, and on his depositing or giving security for the required amount for expenses, a Revenue-officer may, subject to, and in accordance with, rules made in this behalf by the Local Government, ascertain, and record the particulars specified in the last foregoing section with respect to the estate or tenure or any part thereof.

This is meant specially to provide for the case of a combination of the tenants against a new proprietor or tenure-holder who is unable to obtain the papers of his predecessor. The provisions of this section may, however, be had recourse to by a landlord under any circumstances, subject to, and in accordance with, the rules prescribed by the Local Government, for the purpose of having a record of tenants' rights and settlement of rents made by a Revenue-officer. The Local Government, it will be observed from the rules quoted in Appendix I, has prescribed that, if the application is made by a proprietor, it shall not

be admitted unless his name has been registered under the Land-Registration Act, and that Revenue-officers, in making surveys and records-of-right under this section, shall follow the procedure prescribed for the guidance of officers making the more extensive surveys and records-of-right ordered by the Local Government with or without the sanction of the Governor-General under sec. 101, and detailed in Chap. VI of the Rules made by the Local Government under this Act.

104. (1) When, in any proceeding under this chapter, it does not appear that the tenant is holding land in excess of, or less than, that for which he is paying rent, and neither the landlord nor the tenant applies for a settlement of rent, the officer shall record the rent payable by the tenant, and the land in respect of which the rent is payable.

Procedure as to recording or settling rents.

(2) When it appears that a tenant is holding land in excess of, or less than, that for which he is paying rent, or either the landlord or the tenant applies for a settlement of rent, or in any case under section 101, sub-section (2), clause (*d*), the officer shall settle a fair and equitable rent in respect of the land held by the tenant.

(3) In settling rents under this section, the officer shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Civil Court in increasing or reducing rents, as the case may be.

It is to be noted that, under cl. (2), when it appears that the tenant is holding land in excess of, or less than, that for which he is paying rent, or the landlord or tenant applies for a settlement of rent, the Revenue-officer is to settle the rent for all the land held by the tenant, and not merely for the excess land which it appears he is holding.

When it appears that a tenant is holding land in excess of, or less than, that for which he is paying rent, the Revenue-officer is bound to settle a fair rent, whether the parties apply for such settlement or

Revenue-officer bound to settle fair rents, of his

own motion, in certain cases.

not. The Act does not, however, define what is meant by "an area in excess of, or less than, that for which the tenant is paying rent." Revenue-officers, in determining what is an "excess area," should have regard to sec. 52, sub-sec. (2), which affords certain principles by which they will have to be guided in determining the area for which rent has been previously paid. See the note to sec. 52 (2), where this subject is discussed.

"*In any case under sub-sec.* 2, *cl.* (*d*). — Under this clause the Revenue-officer is bound to settle fair rents for all tenants, where a settlement of land-revenue is being made in respect of any local area, whether the tenants have applied for such settlement or not, and whether it appears they are holding land in excess of, or less than, that for which they are paying rent, or it does not so appear, so that it follows that where a settlement of land-revenue is being made in respect of any local area, the rents of all occupancy-raiyats must be fixed in that local area for fifteen years, and those of all non-occupancy raiyats for five years.

In proceedings under this chapter all existing rents presumed to be fair till contrary is proved.

Sub-section (3).—Under this sub-section, a Revenue-officer is bound to presume that the rents paid by non-occupancy and occupancy raiyats alike are fair and equitable till the contrary is proved. There is no corresponding provision binding or authorizing the Civil Courts, in suits for the enhancement of non-occupancy-raiyats' rents, to presume that the existing rent of a non-occupancy-raiyat is fair and equitable. The Civil Court, in such suits, is to have regard "to the rents generally paid by raiyats for lands of a similar description and with like advantages in the same village"—sec. 46 (9). It, therefore, appears that while a non-occupancy-raiyat can only have a fair rent settled by the Civil Courts when he has refused to pay an enhanced rent (sec. 46, sub-secs. 6 and 8), he can have a fair rent settled in proceedings under this chapter on making an application on that behalf, though there be no demand for enhancement. The sections of the Act which lay down rules for the guidance of a Civil Court when increasing or reducing rent, are secs. 29 to 36, 38 and 52.

Publication of record.

105. (1) When the Revenue-officer has completed a record made under this chapter, he shall cause a draft thereof to be locally published in the prescribed manner and for the prescribed period, and shall receive and con-

sider any objection which may be made to any entry therein during the period of publication.

(2) After the expiration of this period, the Revenue-officer shall finally frame the record, and shall cause it to be locally published in the prescribed manner, and the publication shall be conclusive evidence that the record has been duly made under this chapter.

Rules framed by the Local Government for the publication of the draft and of the final record under this section will be found in Appendix I.

Procedure in case of dispute as to entries in record.

106. If at any time before the final publication of the record under the last foregoing section a dispute arises as to the correctness of any entry (not being an entry of a rent settled under this chapter), or as to the propriety of any omission which the Revenue-officer proposes to make, or has made therein or therefrom, the Revenue-officer shall hear and decide the dispute.

These sections (105 and 106) eliminate the danger of anyone being prejudiced by entries made behind his back.

Procedure in deciding disputes.

The procedure to be followed in deciding disputes under this section is given in Chap. VI of the Rules, and is as follows :—

"In proceedings under sec. 106, when a dispute arises before the final publication of the record regarding the correctness of an entry (not being an entry of rents settled under Chap. X), or as to the propriety of any omission, notice of the objection shall be served on all persons whose interests may, in the opinion of the Revenue-officer, be affected thereby, and they shall be called upon to attend at such time and place as the Revenue-officer may fix for the disposal of the objection. If any person attends and contests the objection, the proceeding shall be dealt with as a suit between the parties under the Tenancy Act, in which the objector shall be plaintiff and the other parties defendants. If no person attends to contest the objection, the record may be amended accordingly, or the person who made the objection may, if the Revenue-officer thinks fit, be called upon to produce evidence in support of his objection, which may, in that case, be heard and decided as a suit *ex-parte* under the Tenancy Act."

Procedure to be adopted by Revenue-officer.

107. In all proceedings for the settlement of rents under this chapter, and in all proceedings under the last foregoing section, the Revenue-officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure for the trial of suits, and his decision in every such proceeding shall have the force of a decree.

"*Subject to rules made by the Local Government under this Act.*" The procedure laid down in the Code of Civil Procedure has been modified by the Local Government by the rules contained in Chap. VI of the Rules under this Act (Appendix I), which, among other modifications, authorize the Revenue-officer to allow any number of tenants occupying lands in the same village or estate to make a joint application for settlement of rents, or to be joined as defendants on a similar application by the landlord. Another similar modification is that mentioned in the note to sec. 106.

Appeals from decisions of Revenue-officers.

108. (1) The Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue-officers under this chapter.

(2) An appeal shall lie to the Special Judge from the decision of a Revenue-officer under this chapter, and the provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

(3) Subject to the provisions of Chapter XLII of the Code of Civil Procedure, an appeal shall lie to the High Court from the decision of a Special Judge in any case under section 106 as if he were a Court subordinate to the High Court within the meaning of the first section of that chapter:

Provided that if, in a second appeal, the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any

tenure or holding has been settled, the Court may settle a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained or settled under section 104.

What decisions are, and what are not, appealable to Special Judge.

As the decisions of Settlement-officers are, under this section, appealable to a Special Judge, and as all settlements are ordinarily to be conducted under the provisions of this chapter, it would appear that a Special Judge, who may or may not be the District Judge, will have to be appointed in every district in which settlements of rent are being made by a Revenue-officer in Government or other estates. It is to be remembered, that it is only decisions in proceedings for settlement of rents and in disputes as to the correctness of an entry or the propriety of an omission arising before the final publication of the record (sec. 106) which are appealable to the Special Judge. Such decisions have the force of decrees; but entries recorded by the Revenue-officer acting as such, and not as a Civil Court, such as entries in the khasrah regarding the facts of irrigation, crops grown, rates of rent, and the like, are not decisions. They do not form part of the "record" which is contained in the khewat and khatians. Entries which are not contained in the *khewat* or *khatians* are not, therefore, appealable to the Special Judge. Nor would an undisputed entry as to the amount of the existing rent, not being an entry of a fair rent settled by the Revenue-officer, though forming part of the "record," be a decision. If, however, at any time before final publication of the record a dispute were to arise regarding such latter entry, the Revenue-officer is bound to decide the dispute, following, with some modifications, the procedure laid down in the Code of Civil Procedure, and his decision will then be appealable to the Special Judge.

Undisputed entries in record to be presumptive evidence

109. (1) Every record made under this chapter shall distinguish between the disputed and the undisputed entries therein.

(2) Every undisputed entry in the record shall be presumed to be correct, until the contrary is proved.

Disputed entries.

"*Disputed entries.*"—It is not quite clear what is meant in this section by "disputed entries." Does the expression mean entries the subject-matter of which has been the subject of dispute, or entries which are

still, at the time of completing the record, the subject of dispute? The latter would, at first sight, appear to be the meaning, but it cannot be so in reality; for, under sec. 106, the Revenue-officer is bound to hear and decide any dispute regarding any entry arising before the final publication of the record, and his decision has the force of a decree; so that, *ex hyphothesi*, there would be no disputed entries left when the record is being finally published. It appears, therefore, that what is meant is entries which had been the subject of dispute during the previous proceedings. It is provided accordingly in Chap. VI of the Rules, that the entries which have and have not been the subject of dispute be enumerated in columns 18 and 19 of the khatians.

Time at which settlement of rent is to take effect.

110. When any rent is settled under this chapter, the settlement shall take effect from the beginning of the agricultural year next after the final publication of the record.

Stay of proceedings in Civil Court during preparation of record.

111. When an order has been made under section 101,—

(*a*) a Civil Court shall not, until the final publication of the record, entertain a suit or application for the alteration of the rent or the determination of the status of any tenant in the area to which the order applies; and

(*b*) the High Court may, if it thinks fit, transfer to the Revenue-officer any proceedings pending in a Civil Court for the alteration of any such rent or for the determination of any of the matters specified or referred to in section 102.

This does not oust the jurisdiction of the Civil Courts in cases other than suits or applications for the alteration of the rent or determination of the tenant's status; so that suits for the recovery of arrears of rent, for example, will still continue to be tried in the ordinary Civil Courts, notwithstanding that a record-of-rights is being made in the local area within which the cause of action arose.

Power to authorize a special settle-

112. (1) The Local Government, with the previous sanction of the Governor-General in Council, may, on

being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare, invest a Revenue-officer acting under this chapter with the following powers or either of them, namely :— ment in special cases.

(*a*) power to settle all rents ;

(*b*) power, when settling rents, to reduce rents if in the opinion of the officer the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable.

(2) The powers given under this section may be made exerciseable within a specified area either generally or with reference to specified cases or classes of cases.

(3) When the Local Government takes any action under this section, the settlement-record prepared by the Revenue-officer shall not take effect until it has been finally confirmed by the Governor-General in Council.

BENGAL SECRETARIAT LIBRARY.

The provisions of this section are intended to take the place of Sir R. Temple's Agrarian Outrage Act (VI of 1876, B C.), which was to have effect for three years only, and has consequently expired.

"It seems desirable," Sir Steuart Bayley observed, "that, in exceptional cases, in which it may be necessary to have recourse to this procedure, the Government should have the power of going to the root of the dispute, and should be able to put the whole relations of landlord and tenant on a stable footing for a reasonable period. It is an extreme power, and I trust it will be resorted to as little as Sir Richard Temple's Agrarian Outrage Act was."

113. When the rent of a tenure or holding is settled under this chapter, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy-holding for fifteen years, and, in the case of a non-occupancy-holding, if the rent is settled in any case under section 112 or on the appli- Period for which rents as settled are to remain unaltered.

cation of the landlord under section 104, for nve years. The periods of fifteen and five years shall be counted from the date of the final publication of the record.

It would appear from the wording of this section, read with sec. 104, that a Revenue-officer is bound, on the application of a tenure-holder, to settle a fair rent for a tenure, and that the rent so settled cannot be enhanced for fifteen years. Under sec. 9, the rent of a tenure cannot be enhanced by a Civil Court or by contract during fifteen years next following the date of the enhancement of the contract. These restrictions are meant to apply only to tenures of a more or less raiyati character, such as the jotes of Rungpore. An indigo-planter, who may be thikadar of a whole estate or village, or of a number of villages, is a tenure-holder as defined in sec. 5 (1); but it is not intended that Revenue-officers should settle the amount of rent equitably payable by tenure-holders of that class, or that their rents should not be liable to enhancement by contract more often than once in fifteen years. It cannot have been intended that ijaradars, thikadars, and other tenure-holders of that class should not be allowed perfect freedom of contract to pay any rent or enhancement of rent they please, and as often as they please; for sec. 7 (2) specially enacts that the enhancement of rents of these tenures is subject to contract.

Expenses of proceedings under chapter.

114. Where an order is made under this chapter in any case except under section 101, sub-sec. (2), clause (*d*), the expenses incurred by the Government in carrying out the provisions of this chapter in any local area, or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords and tenants of land in that local area, in such proportions as the Local Government, having regard to all the circumstances of each case, may determine; and the proportion of those expenses so to be defrayed by any person shall be recoverable by the Government from him as if it were an arrear of revenue due by him.

The Local Government has not yet determined, by general or by special order, the proportion of the expense to be defrayed by the landlords and by the tenants. It is to be observed that this sec-

tion lays down that the amount payable by each person shall be recoverable *from him* as if it were an arrear of revenue. The raiyats' quota would, therefore, seem not to be recoverable through the landlord on the principle of cesses under the Cess Act, but must be recovered as a public demand under the Certificate Procedure.

The meaning of the words "having regard to the circumstances of each case" is not very clear. It would be an obvious absurdity to suppose that the Local Government is to have regard to the circumstances of each individual raiyat's case. No doubt what is meant is, that regard should be had to the circumstance of the case of each local area for which a separate order under sec. 101 has been made.

115. When the particulars mentioned in section 102, clause (*b*), have been recorded under this chapter in respect of any tenancy, the presumption under section 50 shall not thereafter apply to that tenancy.

Presumption as to fixity of rent not to apply where record has been prepared.

The presumption referred to is that under which, when a tenure-holder or raiyat proves that his rent or rate of rent has not been changed for the twenty years immediately before the institution of the suit, it is presumed, until the contrary is shown, that he has held at that rent or rate of rent from the time of the Permanent Settlement.

Summary of processes of survey and record-of-rights.

The several processes of a cadastral survey and record-of-rights under this chapter may be briefly described thus—

1*st.*—A survey is to be made of the lands, showing the area of every field or plot of land separately assessed to rent.

2*nd.*—The area of every tenant's holding, as shown by survey, is to be explained to him and to his landlord, and the amount of the tenant's present rent is to be ascertained and recorded.

3*rd.*—Fair rents are to be settled on the application of either landlord or tenant, or without such application, if it appear that the tenant is holding land in excess of, or less than, that for which he is paying rent, or if a settlement of land-revenue is being made in respect of the local area.

4*th.*—The status of every tenant, *viz.*, whether he be a tenure-holder, undertenure-holder, raiyat at fixed rates, a settled, occupancy, non-occupancy or under raiyat, is to be ascertained and recorded.

5*th.*—The character and extent of the interest of every proprietor and proprietary mortgagee is to be ascertained and recorded. This part

of the record will be a copy of the Collector's Land-Revenue Register corrected up to date.

6th.—The "private lands" of proprietors are to be defined and recorded.

The record-of-rights will be contained in—

1st,—the khewat, which contains the record of the character and extent of the interests of proprietors and proprietary mortgagees;

2nd,—the khatians, which will contain a record of the rights and interests of tenure-holders and undertenure-holders, and of the particulars of the holding of every raiyat and under-raiyat.

The record, when framed, will have to be published for one month. All disputes arising during this month regarding any entry in it will have to be decided by the Revenue-officer, whose decision on such disputes will have the force of a decree. His decisions in proceedings for settlement of fair rents on the application of the parties, or without such application in the cases specified in sec. 104 (2), will also have the force of a decree; so that, as the Revenue-officer's decision on disputes and in proceedings for settlement of fair rents have the force of a decree, the only entries in the record which have not the force of a decree are undisputed entries, which do not relate to proceedings for settlement of fair rents, and these are presumed to be correct till the contrary is proved. An example of this latter class of entries would be an entry of the existing rent as the rent payable, where the amount is undisputed, and a fair rent has not been settled by the Revenue-officer either on the application of one of the parties or of his own motion. It is to be observed that the khasrahs, village reports, and other papers, which it may be necessary to draw up for the purpose of preparing the khewat and khatians, not themselves forming part of the khewat or khatians, are not part of the record. Such papers need not be published, nor are the rights of parties affected by any entries made in them.

CHAPTER XI.

RECORD OF PROPRIETORS' PRIVATE LANDS.

Saving as to *khámár* land. Sec. 6, Act X, 1859; s. 6, Act VIII, B. C., 1869.

116. Nothing in Chapter V shall confer a right of occupancy in, and nothing in Chapter VI shall apply to, a proprietor's private lands known in Bengal as khámár, nij or nij-jot, and in Behar as zirát, nij, sír or

kamat, where any such land is held under a lease for a term of years, or under a lease from year to year.

Classes of land.

Proprietors' estates may be regarded as made up of two sorts of lands—*khámár* or demesne (here called proprietors' private lands) and *raiyati* or communal land. Waste land may be either *khámár* or *raiyati*, but ordinarily it is *raiyati*; for all land is presumed to be *raiyati* until the contrary is proved. *Khámár* land comprises all the land which, according to the ancient custom of the country, or according to any local practice, has been recognized as private land, *plus* all the land which, before the commencement of this Act, proprietors have given evidence of a wish to permanently cultivate themselves. They cannot, as explained by Mr. Ilbert in introducing the Tenancy Bill into Council, add to the existing stock of *khámár* land after the passing of this Act, and, consequently, in the future, all the rest of their estates will be either communal or *raiyati* land. But the Act rather adds to the extent of land which is lawfully proprietors' demesne land than diminishes it; for, at the time of the Permanent Settlement, no land was recognized as *khámár* which was not such on the 12th August 1765 (see secs. 37 to 39, Reg. VIII of 1793), and there is no law recognizing the creation of *khámár* land subsequently to that date.

Existing stock of *khámár* land cannot be increased.

Proprietors may bar the accrual of the occupancy status in their *khámár* or private land by letting it under a lease for a term of years, or under a lease from year to year. In reference to it, they are given the fullest freedom of contract. Under the old law, if they did not bar the accrual of these rights in such land, these rights arose (*Gour Hori Sing* v. *Behari Rant*, 3 B.L.R., App., 138; 12 W. R., 278; *Bhugwan Bhagut* v. *Jug Mohun Roy*, 20 W. R., 308; *Sheikh Ashruf* v. *Ram Kishor Ghose*, 23 W. R., 288), and the law in this respect is apparently unchanged. In the *raiyati* land, however, they may not bar the growth of tenant-right, unless in accordance with the provisions of this Act. As to *raiyati* land which may have lapsed, proprietors are allowed to cultivate it if they wish; but if they let it to tenants, they must allow such rights to accrue to them as this Act guarantees. The right to hold *nij-jote* lands passes with the sale to the auction-purchaser, and the ex-zemindar cannot claim any right of occupancy in these lands; his holding, after the sale, is in the capacity of an ordinary raiyat, and must be dealt with accordingly (*Joydutt Jha* v. *Bajee Ram Sing*, 7 W. R., 40; *Reed* v. *Sree Kishen Singh*, 15 W. R., 430).

Lands held by indigo-planters in Behar.

This section, it is to be observed (see sec. 120), refers only to lands cultivated by the proprietor himself, and not to the class of lands in Behar originally occupied by raiyats, but now cultivated by indigo-planters. Such lands would be *khámár* or *sir* proper, if recognized by village custom as proprietor's private lands, or if cultivated by the proprietor himself for twelve years before the passing of this Act; but the mere cultivation of them by a *thikadar* for twelve years before the passing of this Act would not make them *khámár*. A *thikadar* cannot, during the currency of his lease, under any circumstances, acquire occupancy-rights in any land comprised within his *ijara* or lease (sec. 22, cl. 3), whether the land be *zirát* or not; but if he had acquired a right of occupancy in any such land before taking the *thika*, he does not lose it by taking the lease (see explanation to sec. 22).

Power for Government to order survey and record of proprietors' private lands.

117. The Local Government may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of the last foregoing section.

This is new.

The object of this section is to prevent disputes in future as to what is and what is not proprietor's private land.

Two alternative methods of procedure are provided for the determination of private lands:—

(1) that of survey and registration of such land by a Revenue-officer by order of the Local Government under this section;

(2) that of enquiry on the application of the landlord or tenant under the next section.

The former procedure will apply to large areas, where the question is important; and the latter, to disputes about particular plots of land. The provisions of this chapter, while making it incumbent on the Revenue-officer to record certain land as the proprietor's private land, assist him by certain guiding rules (sec. 120), in cases not clearly coming under the description of lands, which he is bound to record as *khámár*.

Power for Revenue-officer to record private land

118. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the

required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record whether the land is or is not a proprietor's private land.

on application of proprietor or tenant.

This is new.

Under sec. 107, the Local Government may make an order, directing a Revenue-officer, when proceeding under Chap. X of this Act, to make a record of *khámár* lands; but, supposing that no Settlement-officer should come on the ground and make such a record for twenty years, it may be difficult for the proprietor to prove that he has cultivated the land for twelve years before the passing of this Act. This section meets this difficulty; for it allows a landlord to go before a Revenue-officer at once, and ask him to record what land he holds as private land, and thus to prevent the possibility of there being any uncertainty on this point at any future date.

The rules framed by the Local Government under this section will be found in Appendix I.

119. When a Revenue-officer proceeds under either of the two last foregoing sections, the provisions of sections 105 to 109, both inclusive, shall apply.

Procedure for recording private land.

This is new.

Under this section, the provisions of secs. 105 to 109 and the rules framed under them relating to the publication of the record, the procedure in cases of dispute as to entries in the draft record, the application of the Code of Civil Procedure to the Revenue-officer's proceedings, the procedure in the case of appeals from his decisions, and the presumptive value of evidence of undisputed entries in the record, are made applicable to the Revenue-officer's record of private lands. It, therefore, follows that appeals from his decisions in such cases must lie to a Special Judge.

120. (1) The Revenue-officer shall record as a proprietor's private land—

Rules for determination of proprietor's private land.

(*a*) land which is proved to have been cultivated as khámár, zirát, sír, nij, nij-jot or kamat by the proprietor himself with his own stock or by

his own servants or by hired labour, for twelve continuous years immediately before the passing of this Act, and

(*b*) cultivated land which is recognized by village usage as proprietor's khámár, zirát, sír, nij, nij-jot or kamat.

It is to be noted that it is land proved to have been cultivated by the proprietor himself, which is *khámár*. Cultivation by a *thikadar* or *ijaradar*, who is a tenure-holder, and not a proprietor, will not, therefore, of itself, show that the land is *khámár*, though it may be so on other grounds,—namely, if so recognized by village custom, or perhaps if specifically let as such, before the 2nd March, 1883 [sub-sec. (2)].

(2) In determining whether any other land ought to be recorded as a proprietor's private land, the officer shall have regard to local custom, and to the question whether the land was, before the second day of March 1883, specifically let as proprietor's private land, and to any other evidence that may be produced; but shall presume that land is not a proprietor's private land until the contrary is shown.

(3) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

This is new.

March 2nd, 1883, is, as already remarked, the date of the introduction of the draft bill into the Governor-General's Council, from which date it was proposed by the Bengal Rent Commission that the Tenancy Act drafted by them should have effect.

CHAPTER XII.

DISTRAINT.

Operation of this chapter postponed to 1st February 1886.

Section 124 of this chapter provides for the making of rules by the High Court for the publication of the notification of the distraint. As, however, draft rules under this section could not be framed till the Act itself came into force, and under sec. 190, cl. (2), the draft rules had then to be published for a month at least before they had the force of law, it followed that, for at least the first month after this Act came into force, there could be no lawful rules under this section for working its provisions. In order to meet this difficulty, a supplemental Act (XX of 1885) was passed, providing, *inter alia*, that the provisions of this chapter, except such of them as confer powers to make rules, shall come into force on such date, not later than the first day of February, 1886, as the Local Government, after the passing of this Act, may, by notification in the local official Gazette, appoint in this behalf, or, if no date is so appointed, on the first day of February, 1886, and not before; and that, until those provisions come into force, the enactments specified in Sched. I, annexed to this Act, shall, in so far as they relate to distraint, continue in force, and all references to those provisions in other portions of this Act shall, so far as may be, be read as if they were made to the corresponding provisions of the said enactments.

Cases in which an application for distraint may be made. Secs. 112 & 113, Act X. 1859; ss. 68, 69 and 71, Act VIII. B. C., 1869.

121. Where an arrear of rent is due to the landlord of a raiyat or under-raiyat, and has not been due for more than a year, and no security has been accepted therefor by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, present an application to the Civil Court, requesting the Court to recover the arrear by distraining, while in the possession of the cultivator,—

(*a*) any crops or other products of the earth standing or ungathered on the holding;

(*b*) any crops or other products of the earth which have been grown on the holding and have been reaped or gathered and are deposited on the holding, or on a threshing-floor or place for treading

out grain, or the like, whether in the fields or within a homestead:

Provided that an application shall not be made under this section—

(1) by a proprietor or manager as defined under the Land Registration Act, 1876, or a mortgagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear is due have been registered under the provisions of that Act; or

VII (B. C) of 1876.

(2) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum is payable under a written contract or in consequence of a proceeding under this Act or an enactment hereby repealed; or

(3) in respect of the produce of any part of the holding which the tenant has sublet with the written consent of the landlord.

Provisos 1 and 2 are new.

History of law of distraint in Bengal.

The law of distraint is an offset of English law. It was originally introduced into this country by Regs. XVII of 1793 and XLV of 1795. Certain specified landlords were empowered "to distrain and sell the crops and products of the earth of every description, the grain, cattle, and all other personal property (whether found on the premises of the defaulter or of any other person) belonging to their tenants. This continued to be the law till 1859, when the power of distraint was limited to the produce of the land on account of which the rent was due." (Rent Law Commissioners' Report, p. 2.) It was at first proposed, when this Act was under consideration, to withdraw the power of distraint altogether from landlords. This proposal was, however, negatived, but the powers of distraint given by the old law have been very considerably modified in this Act. A landlord can no longer distrain except through the Courts, unless authorized to do so by the Local Government (see sec. 141). Ordinarily, distraint will be carried out by the zemindar's servants only under the supervision of the

Court, and the assistance of the Court is to be obtained "on application."

"*Any crops or other products of the earth.*"—It has been held that the provisions of Act X of 1859 refer only to such produce of the land as becomes ripe, and is cut, gathered, and stored (*Sheo Pershad Tewary* v. *Mussamut Moleema Beebee*, 1 Alla., 76). Trees, shrubs, and plants, growing in a nursery ground, cannot be distrained for rent (Selwyn's N. P., p. 669). What crops may be distrained.

A landlord cannot distrain crops for arrears due, not from the tenant, but from another person not in possession, and who did not cultivate the crops (*Mohinee Dassee* v. *Ramcoomar Kurmokar*, W. R., Sp. No., 1864, Act X, p. 77).

Section 112, Act X of 1859, and sec. 68, Act VIII (B. C.) of 1869 provided that no co-sharers in an estate or tenure should exercise the power of distraint otherwise than through a manager authorized to collect the rents of the whole estate or tenure, and the provisions of sec. 188 of this Act (*post*) similarly restrict the exercise of the power of distraint under this Act. No single co-sharer in an estate, tenure, or holding can now exercise the power of distraint any more than he could do under the former law. The power of distraint could, under the old law, be exercised even in cases in which the tenant had sublet the land, the crops of the sub-tenant being subject to distraint for rent due from the tenant (*Geetum Sing* v. *Buldeo Kohar*, 4 Alla., 76). But, under the provisions of cl. (2) of the proviso to this section, it is evident that it is only in cases in which the tenant has sublet the land without the written consent of the landlord that the crops of the under-raiyat are liable to be distrained by the landlord for arrears of rent due from the raiyat. Distraint by co-sharers.

122. (1) Every application under the last foregoing section shall specify— Form of application.

(*a*) the holding in respect of which the arrear is claimed, and the boundaries thereof, or such other particulars as may suffice for its identification ;

(*b*) the name of the tenant ;

(*c*) the period in respect of which the arrear is claimed ;

(*d*) the amount of the arrear, with the interest, if any, claimed thereon, and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is claimed, the contract, or proceeding, as the case may be, under which that amount is payable ;

(*e*) the nature and approximate value of the produce to be distrained ;

(*f*) the place where it is to be found, or such other particulars as may suffice for its identification ; and

(*g*) if it is standing or ungathered, the time at which it is likely to be cut or gathered.

(2) The application shall be signed and verified in the manner prescribed by the Code of Civil Procedure for the signing and verification of plaints.

XIV of 1882.

This is new.

By whom to be signed and verified.

Section 51, Act XIV of 1882, provides, that "the plaint shall be signed by the plaintiff and his pleader (if any), and shall be verified at the foot by the plaintiff or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. Provided that, if the plaintiff, by reason of absence or for other good cause, is unable to sign the plaint, it may be signed by any person duly authorized by him in this behalf."

Section 52 provides, that "the verification must be to the effect that the same is true to the knowledge of the person making it, except as to matters stated on information and belief, and that as to these matters he believes it to be true. The verification shall be signed by the person making it."

Under the old law, "naibs, gomastahs, and other agents engaged in the collection of rent" could distrain "if expressly authorized to do so by power-of-attorney in that behalf." Now, an application to distrain can, under sec. 187 (*post*), be presented to the Court by an agent of the landlord, if empowered in this behalf by a written authority under the hand of the landlord, unless the Court otherwise directs.

Procedure on receipt of application.

123. (1) The applicant shall, at the time of filing an application under the foregoing sections, file in Court such documentary evidence (if any) as he may consider necessary for the purposes of the application.

(2) The Court may, if it thinks fit, examine the applicant, and shall, with as little delay as possible, admit the application or reject it, or permit the applicant to furnish additional evidence in support of it.

(3) Where a Court cannot forthwith admit or reject an application under sub-section (2), it may, if it thinks fit, make an order prohibiting the removal of the produce specified in the application pending the execution of an order for distraining the same or the rejection of the application.

(4) When an order for distraining any produce is made under this section at a considerable time before the produce is likely to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, if it thinks fit, make a further order prohibiting the removal of the produce pending the execution of the order for distraint.

This is new.

Execution of order for distraint.

124. If an application is admitted under the last foregoing section, the Court shall depute an officer to distrain the produce specified therein, or such portion of that produce as it thinks fit; and the officer shall proceed to the place where the produce is, and distrain the produce by taking charge of it himself, or placing some other person in charge of it in his behalf, and publishing a notification of the distraint in accordance with rules to that effect to be made by the High Court:

Provided that produce which from its nature does not admit of being stored shall not be distrained

under this section at any time less than twenty days before the time when it would be fit for reaping or gathering.

This is new.

The rules made by the High Court under this section will be found in Appendix II.

Service of demand and account. Sec. 116, Act X, 1859; Sec. 72, Act VIII, B. C., 1869.

125. (1) The distraining officer shall, at the time of making the distraint, serve on the defaulter a written demand for the arrear due, and the costs incurred in making the distraint, with an account exhibiting the grounds on which the distraint is made.

(2) Where the distraining officer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and account on that person likewise.

(3) The demand and account shall, if practicable, be served personally; but if a person on whom they are to be served absconds or conceals himself, or cannot otherwise be found, the officer shall affix copies of the demand and account on a conspicuous part of the outside of the house in which he usually resides.

Right to reap, &c., produce. Sec. 118, Act X, 1859. Sec. 74, Act VIII, B. C., 1869.

126. (1) A distraint under this chapter shall not prevent any person from reaping, gathering, or storing any produce, or doing any other act necessary for its due preservation.

(2) If the person entitled to do so fails to do so at the proper time, the distraining officer shall cause any standing crops or ungathered products distrained to be reaped or gathered when ripe, and stored in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the

neighbourhood, or shall do whatever else may be necessary for the due preservation of the same.

(3) In either case the distrained property shall remain in the charge of the distraining officer, or of some other person appointed by him in this behalf.

127. (1) Unless the demand, with all costs of the distraint, be immediately satisfied, the distraining officer shall issue a proclamation specifying the particulars of the property distrained and the demand for which it is distrained, and notifying that he will, at a place and on a day specified, not being less than three or more than seven days after the time of making the distraint, sell the distrained property by public auction :

Sale-proclamation to be issued unless demand is satisfied.

Provided that when the crops or products distrained from their nature admit of being stored, but have not yet been stored, the day of the sale shall be so fixed as to admit of their being made ready for storing before its arrival.

(2) The proclamation shall be stuck up on a conspicuous place in the village in which the land is situate, for which the arrears of rent are claimed.

This is new.

128. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort if the distraining officer is of opinion that it is likely to sell there to better advantage.

Place of sale. Sec 129, Act X, 1859. Sec. 86, Act VIII, B. C., 1869.

129. (1) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for storing.

When produce may be sold standing.

(2) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled

to enter on the land by himself, or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them.

This is new.

Manner of sale. Sec. 129. Act X, 1859. Sec. 86, Act VIII. B. C., 1869.

130. The property shall be sold by public auction, in one or more lots as the officer holding the sale may think advisable; and if the demand, with the costs of distraint and sale, is satisfied by the sale of a portion of the property, the distraint shall be immediately withdrawn with respect to the remainder.

Postponement of sale. Sec. 130, Act X, 1859. Sec. 87. Act VIII, B. C, 1869.

131. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person authorized to act in his behalf, applies to have the sale postponed till the next day, or (if a market is held at the place of sale) the next market-day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property.

Payment of purchase-money. Sec. 131, Act X. 1859. Sec. 88, Act VIII. B. C., 1869.

132. The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs, and in default of such payment the property shall be put up again and sold.

Certificate to be given to purchaser. Sec. 131. Act X. 1859. Sec. 88, Act VIII, B. C., 1869.

133. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Proceeds of sale how to be applied. Sec. 132, Act X, 1859; Sec. 89, Act VIII, B. C., 1869.

134. (1) From the proceeds of every sale of distrained property under this chapter, the officer holding the sale shall pay the costs of the distraint and sale, calculated on a scale of charges prescribed by rules to be

made, from time to time, by the Local Government in this behalf.

The rules made, and scale of charges prescribed, by the Local Government under this section will be found in Appendix I (see Rule 6, Chap. VII of Government Rules under this Act).

(2) The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale ; and the surplus (if any) shall be paid to the person whose property has been sold.

Certain persons may not purchase. Sec. 133, Act X. 1859. Sec. 90, Act VIII. B.C., 1869.

135. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

All persons violating the provisions of this section are punishable under sec. 185 of the Indian Penal Code.

Procedure where demand is paid before the sale. Sec 121, Act X. 1859. Sec. 77. Act VIII. B.C., 1869.

136. (1) If at any time after a distraint has been made under this chapter, and before the sale of the distrained property, the defaulter, or the owner of the distrained property where he is not the defaulter, deposits in the Court issuing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served under section 125, with all costs which may have been incurred after the service of the demand, the Court or officer, as the case may be, shall grant a receipt for the same and the distraint shall forthwith be withdrawn.

(2) When the distraining officer receives the deposit, he shall forthwith pay it into the Court.

(3) A receipt granted under this section to an owner of distrained property not being the defaulter shall afford a full protection to him against any subsequent

claim for the arrears of rent on account of which the distraint was made.

(4) After the expiration of one month from the date of a deposit being made under this section, the Court shall pay therefrom to the applicant for distraint the amount due to him, unless in the meanwhile the owner of the property distrained has instituted a suit against the applicant contesting the legality of the distraint and claiming compensation in respect of the same.

(5) A landlord shall not be deemed to have consented to his tenant's subletting the holding or any part thereof merely by reason of his having received an amount deposited under this section by an inferior tenant.

This is new.

Amount paid by under-tenant for his lessor may be deducted from rent.

137. (1) When an inferior tenant, on his property being lawfully distrained under this chapter for the default of a superior tenant, makes any payment under the last foregoing section, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, shall in like manner be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

(2) Nothing in this section shall affect the right of an inferior tenant making a payment under the last foregoing section to institute a suit for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this section.

This is new.

Conflict between rights of

138. When land is sublet, and any conflict arises under this chapter between the rights of a superior and

of an inferior landlord who distrain the same property, the right of the superior landlord shall prevail.

superior and inferior landlords.

This is new.

Under proviso 2 to sec. 121 (*ante*), a landlord is prohibited from distraining the produce of any part of a holding which has been sublet with his written consent. It follows that there can only be such conflict as is contemplated by this section when the land has been sublet without the written consent of the landlord.

139. When any conflict arises between an order for distraint issued under this chapter and an order issued by a Civil Court for the attachment or sale of the property which is the subject of the distraint, the order for distraint shall prevail; but, if the property is sold under that order, the surplus proceeds of the sale shall not be paid under section 134 to the owner of the property without the sanction of the Court by which the order of attachment or sale was issued.

Distraint of property which is under attachment.

This is new.

140. No appeal shall lie from any order passed by a Civil Court under this chapter; but any person whose property is distrained on an application made under section 121 in any case in which such an application is not permitted by that section may institute a suit against the applicant for the recovery of compensation.

Suit for compensation for wrongful distraint.

Secs. 139 and 141, Act X, 1859. Secs. 96 and 97, Act VIII, B.C., 1869.

It is to be observed that the ground on which a suit for compensation may be brought is very limited. It is only in cases in which an application under sec. 121 has been allowed, and the distraint has accordingly taken place, and when subsequently it is shown that the application should not have been allowed, that the suit for compensation will lie. In other words, a suit for damages under this section will only lie where the distraint has been initiated in a Court; but under the provisions of sec. 186 (*post*), if any person distrains, or attempts to distrain, without making such application, or resists a

distraint duly made, or forcibly or clandestinely removes any property duly distrained, or, except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing, or otherwise dealing with the produce of a holding, he will be deemed to have committed criminal trespass within the meaning of the Penal Code, and will, moreover, be liable to an ordinary civil suit for damages. Section 186 makes a great change in the law on this subject. The section was thought necessary in order to put a stop to abuses of the old distraint law, which were said to prevail especially in Behar.

Before a tenant can obtain a decree for damages on the ground of illegal distraint, he must prove what loss he has actually sustained (*Oojan Dewan* v. *Prannath Mundul*, 8 W. R., 220).

Power for Local Government to authorize distraint in certain cases.

141. (1) When the Local Government is of opinion that in any local area or in any class of cases it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application under this chapter to the Civil Court, it may, from time to time, by order, authorize the landlord to distrain, by himself or his agent, any produce for the distraint of which he would be entitled to apply under this chapter to the Civil Court:

Provided that every person distraining any produce under such authorization shall proceed in the manner prescribed by section 124, and shall forthwith give notice, in such form as the High Court may, by rule, prescribe, to the Civil Court having jurisdiction to entertain an application for distraining the produce, and that Court shall, with no avoidable delay, depute an officer to take charge of the produce distrained.

(2) When an officer of the Court has taken charge of any distrained produce under this section, the proceedings shall thereafter be conducted in all respects as if he had distrained it under section 124.

(3) The Local Government may at any time rescind any order made by it under this section.

This is new.

The Local Government has made no order under this section. The section is intended to meet a difficulty, which it was supposed may arise in particular tracts, where, from the nomadic habits of the raiyats, or from the facility with which they may slip across the frontier, and remove the produce to border native states, it may be impracticable for the landlord to obtain an order of the Court in time to prevent the removal of the crop.

Power for High Court to make rules.

142. The High Court may, from time to time, make rules consistent with this Act for regulating the procedure in all cases under this chapter.

This is new.

The rules made by the High Court under the provisions of this section will be found in Appendix II.

CHAPTER XIII.

JUDICIAL PROCEDURE.

Power to modify Civil Procedure Code in its application to landlord and tenant suits.

143. (1) The High Court may, from time to time, with the approval of the Governor-General in Council, make rules consistent with this Act declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

(2) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure shall apply to all such suits.

This is new.

The High Court has not as yet made any rules under this section. But, under the provisions of sec. 148 (*post*), very considerable portions of the Code of Civil Procedure do not apply to suits under this Act.

Jurisdiction in proceedings under Act. Sec. 35, Act VIII. B. C., 1869.

144. (1) The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought.

(2) When under this Act a Civil Court is authorized to make an order on the application of a landlord or a tenant, the application shall be made to the Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application is brought.

Naibs or gumáshtas to be recognized agents. Sec. 32. Act VIII. B. C., 1869.

145. Every náib or gumáshta of a landlord empowered in this behalf by a written authority under the hand of the landlord shall, for the purposes of every such suit or application, be deemed to be the recognized agent of the landlord within the meaning of the Code of Civil Procedure, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending, or in which the application is made.

This written authority requires to be stamped under art. 50, Sched. I, Act I of 1879. A recognized agent may make or do any appearance, application, or act required or authorized by law to be made or done by a party to a suit or appeal, except when otherwise expressly provided by law (sec. 36, Act XIV of 1882). But a recognized agent cannot sue or appear in his own name (*Mokha Harakraj Joshee* v. *Bisseswar Dass*, 5 B. L. R., App., 11; 13 W. R., 344; *Charter* v. *Missree Lall*, 2 Alla., 179; *Tyaruddeen* v. *Hurst Pudmer*, 4 Alla., 68a), and so a naib or gumáshta must institute or defend a suit in the landlord's name, and can only act as the landlord's agent in conducting it (*Modhoo Soodhan Sing* v. *Moran & Co.*, 11 W. R., 43; *Koonjoo Behari Roy* v. *Poorna Chunder Chatterjee*, I. L. R., 9 Calc., 450; 12 C. L. R., 55).

146. The particulars referred to in section 58 of the Code of Civil Procedure shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by that section, be entered in a special register to be kept by each Civil Court, in such form as the Local Government may, from time to time, prescribe in this behalf.

Special register of suits. Sec. 42, Act VIII, B. C., 1869.

The particulars referred to in sec. 58 of the Code of Civil Procedure are (*a*) the name of the Court; (*b*) the name, description, and place of residence of the plaintiff; (*c*) the name, description, and place of residence of the defendant; (*d*) a concise statement of the cause of action, and when and where it arose; (*e*) the relief demanded; (*f*) any amount set off or relinquished.

No form of special register has as yet been prescribed.

147. Subject to the provisions of section 373 of the Code of Civil Procedure, where a landlord has instituted a suit against a raiyat for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after three months from the date of the institution of the previous suit.

Successive rent-suits.

This is new.

This is an important provision introduced for the purpose of preventing a tenant being harassed by successive suits for arrears of rent. But it applies only to "raiyats" and "holdings," and not to tenure-holders, or under-raiyats, and their tenancies. Section 373 of Act XIV of 1885 refers to cases in which a plaintiff is allowed, owing to some formal defect or for some other sufficient reason, to withdraw his suit, or abandon part of his claim, with liberty to bring a fresh suit for the same subject-matter. But one of several plaintiffs cannot be permitted to withdraw without the consent of the others. When so allowed to withdraw, the plaintiff will, under this section, not be required to wait three months before bringing a fresh suit.

In connection with the subject of suits for arrears of rent, the provisions of sec. 43, Act XIV of 1882, and the illustration to this section are very important. They are as follows :—

Suit must include whole claim.

"Every suit shall include the whole of the claim which the plaintiff

is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court. If a plaintiff omit to sue in respect of, or intentionally relinquish, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. A person entitled to more than one remedy in respect of the same cause of action may sue for all or any of his remedies; but if he omits (except with the leave of the Court obtained before the first hearing) to sue for any of such remedies, he shall not afterwards sue for the remedy so omitted. . . . . .

Relinquishment bars claim.

Omission to sue for one of several remedies bars suit for that remedy.

Illustration.

"A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1881 and 1882 is due and unpaid. A sues B only for the rent due for 1882. A shall not afterwards sue B for the rent due for 1881."

Claim for arrears of rent must include all rent due at time of institution.

Under the provisions of this section and the illustration to it, the High Court, in the case of *Taruck Chunder Mookerjee* v. *Panchu Mohini Debya* (I. L. R., 6 Calc., 791; 8 C. L. R., 297), has decided that when arrears of rent for more than one year are due, and a plaintiff sues only for the arrears of the earlier year or years, and omits to sue for the arrears of the later year or years, his suit for the arrears of the later period is barred, and he cannot subsequently sue for them. This decision, which was followed in the recent case of *Sheo Sunker Sahoy* v. *Hridoy Narain* (I. L. R., 9 Calc., 143), sets aside the ruling in the case of *Raja Sotto Churn Ghosal* v. *Obhoy Nund Dass* (2 W. R., Act X, 31), in which it was held that a separate suit would lie for the rents of each year, and also the rulings in the cases of *Ram Soondur Sein* v. *Krishno Chunder Goopto* (17 W. R., 380) and *Kristo Kinker Paramanik* v. *Ram Dhun Chettangia* (24 W. R., 326), in which it was held that the recovery of an instalment of rent was not barred merely because it was not included in a suit for arrears of rent instituted after it became due. Under the provisions of sec. 43, Act XIV of 1882, these rulings are no longer good law; and now, under the High Court decision in the case of *Taruck Chunder Mookerjee* v. *Panchu Mohini Debya*, there is no difference between a suit omitting to claim an earlier rent and a suit omitting to claim a later rent which is due at the date of its institution. In both cases, the plaintiff's claim for the rent he omits to sue for is barred. A landlord must now, when bringing a suit for arrears of rent, claim all the rent due to him at the time of institution.

Further, in the case of *Kunnuck Chunder Mookerjee* v. *Gurudass Biswas* (I. L R., 9 Calc., 919), it is said that, under secs. 42 and 43 of the Civil Procedure Code, plaintiffs must bring their entire claim, and every remedy enforceable in respect of that claim, into Court at once, and if they fail to do that in any suit, they cannot afterwards avail themselves of any remedy on which they have not chosen to insist in the first suit. Suits for enhanced rent and suits for rent are claims arising in respect of the same subject-matter, and a plaintiff cannot be allowed, after having unsuccessfully sued for rent at an enhanced rate, to sue for the original rent for previous years. Under the old law, therefore, a landlord could, in a suit for enhanced rent, obtain a decree for rent at the old rate, if he had inserted in his plaint a prayer for the alternative relief of rent at the old rate. If he failed to claim and obtain such a decree, his claim for rent was altogether barred.

Under old law, landlord failing in suit for enhanced rent could get decree for rent at old rate.

Under the present Act, however, no suits for rent at an enhanced rate can be brought. An enhancement-suit under the present Act is a suit to enhance and determine the rate of the enhanced rent. The claim in such a suit cannot be considered as arising out of the same subject-matter as a claim for arrears of rent; for, as pointed out in the Privy Council decision in the case of *Sura Sundari Dabia* v. *Golam Ali* (19 W. R., 142; 15 B. L. R., 125 note), "a suit to enhance is very different from a suit to recover arrears of rent at the rate originally fixed, and is founded entirely on different principles;" so that, probably, now a landlord who fails in an enhancement-suit under the present Act will not be debarred from suing again for arrears at the old or admitted rate. Further, in any case in which a landlord claims more rent or rent at a higher rate than the tenant admits to be due, but in which the tenant admits that some rent is due from him, the tenant will, under the provisions of sec. 150 (*post*), have to pay into Court the amount he admits to be due from him, before the Court can take cognizance of his plea.

Cannot do so now.

Tenant admitting any rent due must pay it into Court.

148. The following rules shall apply to suits for the recovery of rent :—

Procedure in rent-suits.

(*a*) sections 121 to 127 (both inclusive), 129, 305 and 320 to 326 (both inclusive) of the Code of Civil Procedure shall not apply to any such suit : XIV of 1882.

(*b*) the plaint shall contain, in addition to the particulars specified in section 50 of the Code of Civil Procedure, a statement of the situation, designation, extent, and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof a description sufficient for identification:

XIV of 1882.

(*c*) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only:

(*d*) the service of the summons may, if the High Court by rule, either generally or specially for any local area, so directs, be effected, either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under Part III of the Indian Post Office Act, 1866;

XIV of 1866.

when a summons is so forwarded in a letter, and it is proved that the letter was duly posted and registered, the Court may presume that the summons has been duly served:

(*e*) a written statement shall not be filed without the leave of the Court:

(*f*) the rules for recording the evidence of witnesses prescribed by section 189 of the Code of Civil Procedure shall apply, whether an appeal is allowed or not:

XIV of 1882.

(*g*) the Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for ejectment for arrears:

(*h*) notwithstanding anything contained in section 232 of the Code of Civil Procedure, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him. XIV of 1882.

This is new.

Clause (*a*.) Sections 121 to 127 of the Civil Procedure Code relate to the examination of parties by interrogatories. Section 129 gives a Court power to order discovery of documents. Section 305 gives a Court power to postpone a sale to enable the defendant to raise the amount of the decree by mortgage, lease, or private sale of the property. Sections 320 to 326 refer to the transfer to the Collector for execution of decrees relating to immoveable property.

Interrogatories and discovery inapplicable to rent-suits.

Clause (*b*). For the particulars specified in sec. 50, Act XIV of 1882, see note to sec. 146.

Clause (*e*). A written statement filed by a defendant in a civil suit at the first hearing does not require a stamp—*Cherag Ali* v. *Kadir Mahomed*, 12 C. L. R., 367; *Nagu* v. *Yeknath*, I. L. R., 5 Bom., 400.

Clause (*f*) is very important. It does away with the necessity of recording at length the evidence of witnesses in suits for the recovery of rent. It allows the Judge, as the examination of each witness proceeds, to make merely a memorandum of the substance of what the witness deposes, which memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record. The memorandum should be written legibly in the vernacular of the Judge, or in English, if he is sufficiently acquainted with that language, and shall be signed by the Judge and dated.

Evidence how to be recorded.

The provisions of cl. (*h*) will prevent the transfer of decrees for arrears of rent for mere speculative purposes.

By the provisions of this section, the procedure which has to be followed in an ordinary civil suit has been much abbreviated. In the following respects, the procedure in a suit for the recovery of rent now differs from that of an ordinary civil suit:—(1) The summons, as a rule, is for the final disposal of the case; (2) the defendant can file no written statement without the leave of the Court; (3) there can be no interrogatories of the parties, or discovery of documents; (4) the

Differences between procedure in suits for the recovery of rent and ordinary civil suits.

evidence of the witnesses need not be recorded at length; (5) as a rule, execution may issue on the application of the decree-holder at the time the decree is passed, unless it is a decree for ejectment for arrears; and (6) a judgment-debtor cannot obtain a suspension of the sale of his immoveable property to enable him to raise the amount of the decree by mortgage, lease, or private sale.

At one time it was proposed to introduce a short and summary procedure for the recovery of rents, analogous to that on negotiable instruments under Chap. XXXIX of the Civil Procedure Code, but it was finally decided that it would be unsafe to do so, and that the provisions of the present section and of the subsequent sections of this chapter contain all the changes that the Legislature could safely make by way of shortening the proceedings in rent-suits.

Payment into Court of money admitted to be due to third person

149. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

(2) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within three months from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3).

This is new.

This is an important modification of the law, made for the purpose of facilitating the recovery of arrears of rent, and of preventing landlords being harassed by their tenants by unduly protracting suits by

raising frivolous pleas as to the rent being due to third persons. The meaning of sub-sec. (4) is, that any third person claiming money, which has been paid to a plaintiff under sub-sec. (3), may always bring a regular civil suit to recover the money from the plaintiff, notwithstanding the fact that he did not institute a suit against the plaintiff within the three months mentioned in sub-sec. (3).

The mode of service of the notice referred to in cl. (*a*) is prescribed by Rule 3, Chap. I of the Rules to be found in Appendix I.

Payment into Court of money admitted to be due to landlord.

150. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

This is new.

This is also a modification of the law introduced to facilitate the recovery of arrears of rent, and to prevent the defendant protracting the proceedings by raising merely vexatious pleas of excessive demand of rent.

Provision as to payment of portion of money.

151. When a defendant is liable to pay money into Court under either of the two last foregoing sections, if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs.

This is new.

Court to grant receipt.

152. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person, as the case may be.

This is new.

Appeals in rent-suits.

153. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where—

Sec. 102, Act VIII, B. C., 1869.

(*a*) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or

(*b*) the decree or order is passed by any other judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees ;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant :

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity ; and may pass such order as the District Judge thinks fit.

The provisions of this section, making final the decree or order of a Subordinate Judge in a suit of the value of not more than one hundred rupees, and of a specially empowered judicial officer in a suit of the value of not more than fifty rupees, are new.

"*The amount claimed in the suit does not exceed one hundred rupees.*" Unless this fact appears either from the finding of the District Judge

or elsewhere upon the proceedings, the High Court has no right to draw any inference to that effect (*Tulsi Panday* v. *Buchu Lall*, I. L. R., 9 Calc., 596; 12 C. L. R., 223). An appeal does not lie to the High Court from a decision of a District Judge staying execution in a suit for arrears of rent and for ejectment where the value of the amount decreed is less than Rs. 100. Nor can an application, made to eject the tenant on his default to pay into Court the moneys due under the decree within the time fixed by sec. 52 of Bengal Act VIII of 1869, confer such right of appeal (*Parbutty Churn Sen* v. *Shaik Mondari*, I. L. R., 5 Calc., 594).

"*A question relating to title in land, or to some interest in land as between parties having conflicting claims thereto.*"—When a case was decided solely on the want of proof of relationship of landlord and tenant between the parties, it was held that no special appeal lay to the High Court (*Hurry Mohun Majumdar* v. *Dwarknath Sen*, 18 W. R., 42; *Kripa Moyee Debia* v. *Dropadi Chowdrani*, 24 W. R., 213; *Karim Sheikh* v. *Mukhoda Soondary Dassee*, 15 B. L. R., 111). Where a tenant merely repudiates the tenancy without denying the landlord's title, no appeal will lie (*Eshan Chunder Ghosal* v. *Burmo Moyi Dossee*, 16 W. R., 233). Where a defendant pleaded that the plaintiff had ceased to have any interest in the land, and the suit was dismissed, there was no finding as between the plaintiff and any other person claiming title to the land (*Donzelli* v. *Tekan Nodaf*, 2 C. L. R., 558). In a suit in which the defendant (raiyat) sets up the title of a third person, who is not made a party, the decision cannot be considered a binding decision in respect of title as between parties having conflicting claims to land (*Sheikh Dilbor* v. *Issan Chunder Roy*, 21 W. R., 36; *Kashi Ram Dass* v. *Maharani Sham Mohini*, 23 W. R., 227; *Raj Kishen Mookerjee* v. *Sreenath Dutt*, 23 W. R., 408; *Doorga Narain Sen* v. *Ram Lall Chhutar*, I. L. R., 7 Calc., 330; *Lodai Mollah* v. *Kalli Dass Roy*, I. L. R., 8 Calc., 238; *Ram Prosad Roy* v. *Shoroop Paramanik*, I. L. R., 8 Calc., 712). In a suit in which plaintiff claims rent as zemindar, and defendant, admitting his own tenancy, claims it as mortgagee, there cannot be said to be conflicting claims to or some interest in land (*Raj Kishen Mookerjee* v. *Peary Mohon Mookerjee*, 24 W. R., 114).

Questions relating to title.

"*A question of right to enhance or vary the rent of a tenant.*"—It is immaterial whether the rate of rent was varied, if the Judge did not decide the question of the right to vary the rent (*Watson & Co.* v. *Mohendro Nath Pal*, 23 W. R., 436). In a suit in which the raiyat

Questions of right to enhance or vary rent.

denied execution of a document, on the basis of which the suit was brought, and produced evidence to show that the rates mentioned in it were not correct, it was held that this involved no question of a right to vary the rent (*Moharaj Koomar Nitressur Sing* v. *Jholi Teli*, 23 W. R., 343).

Questions as to amount payable.

"*A question of the amount of rent annually payable by the tenant.*" These words make a change in the law, and allow an appeal in cases in which an appeal was not allowed under the old law, for, under sec. 102, Act VIII, B. C., of 1869, no appeal lay in cases in which merely a question as to the amount of rent payable was involved (*Huro Pershad Chuckerbutty* v. *Sreedam Chunder Chowdhry*, 20 W. R., 15).

Grounds of special appeal.

The provisions of Chap. XLII of the Civil Procedure Code are, of course, applicable to suits under this Act, and consequently a second appeal to the High Court will only lie on the grounds (*a*) of the decision being contrary to law or usage having the force of law; (*b*) of the decision having failed to determine some material issue of law or usage having the force of law; and (*c*) of a substantial error or defect in the procedure, which may possibly have affected the decision on the merits.

Date from which decree for enhancement takes effect.

154. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this section shall prevent the Court from fixing, for special reasons, a later date from which any such decree shall take effect.

This is new.

Relief against forfeitures.

155. (1) A suit for the ejectment of a tenant, on the ground—

(*a*) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or

(*b*) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment,

shall not be entertained unless the landlord has served, in the prescribed manner, a notice on the tenant, specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(2) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(3) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section (2).

(4) If the defendant, within the period or extended period (as the case may be), fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

This is new.

"*And the tenant has failed to comply within a reasonable time with that request.*"—It is nowhere laid down what is "a reasonable time" within which a tenant should comply with such a request. It is left

to the discretion of the Courts to determine this point with reference to the particular circumstances of each case coming before them.

Service of notice.

The Local Government has directed that a notice under sec. 155 shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure on payment of the process-fee prescribed by the High Court under the Court-fees Act. (See Rule 11, Chap. V, Appendix I.)

Rights of ejected raiyats in respect of crops and land prepared for sowing.

156. The following rules shall apply in the case of every raiyat ejected from a holding:—

(*a*) when the raiyat has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment;

(*b*) when the raiyat has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value;

(*c*) but a raiyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage;

(*d*) if the landlord elects under this section to allow a raiyat to retain possession of the land, the raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

This is new.

Disposal of away-going crop.

This section provides rules for the disposal of the away-going crop. Under the former law, when a raiyat was ejected, he lost his crop as well as his land (*Durjan Mahton* v. *Wazid Hossain*, I. L. R., 5 Calc., 135). This is not the case now. But, in the case of the holding being sold in execution, the crop passes to the purchaser at the auction-sale, except when it has been specially excepted by the notification of sale, or a custom to the contrary has been proved (*Afatoolla Sirdar* v. *Dwarkanath Moitry*, I. L. R., 4 Calc., 814). In this case, the raiyat gets the value of the crop in the surplus sale-proceeds.

Power for Court to fix fair rent as alternative to ejectment.

157. When a plaintiff institutes a suit for the ejectment of a trespasser, he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

This is new.

Application to determine incidents of tenancy.

158. (1) The Court having jurisdiction to determine a suit for the possession of land may, on the application of either the landlord or the tenant of the land, determine all or any of the following matters (namely) :—

(*a*) the situation, quantity and boundaries of the land ;

(*b*) the name and description of the tenant thereof (if any) ;

(*c*) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat, or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure; and

(*d*) the rent payable by him at the time of the application.

(2) If, in the opinion of the Court, any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize in that behalf by rule made under section 392 of the said Code.

XIV of 1882.

(3) The order on any application under this section shall have the effect of, and be subject to the like appeal as, a decree.

This is new.

Suits for interchange of pottahs and kabuliyats done away with

This section is taken generally from the North-Western Provinces Rent Act (XII of 1881), and is intended to serve as a substitute for the suit for interchange of pottahs and kabuliyats of the former law. The provisions of the former law as to the interchange of pottahs and kabuliyats and suits for obtaining them have been done away with on the recommendation of the Rent Law Commission, who pointed out that very little use was ever made of them, and that they were not well calculated for the settling of essential questions connected with the tenancy, which might be in dispute between the parties, regarding, for example, the rate of rent, or the quantity of land held by the tenant. Such matters can now be determined under the provisions of this section. There is nothing now to prohibit the interchange of pottahs and kabuliyats, but they can no longer be sued for.

Government notification

Clause (2). By Notification dated the 4th November, 1885, the Local Government has made the following rule under this clause:

"Under sec. 392 of Act XIV of 1882, the Lieutenant-Governor has been pleased to make the following rules as to the persons to whom commissions shall be issued under the Bengal Tenancy Act. When, under secs. 31 (*b*) and 158 (2) of the Bengal Tenancy Act, Chap. directs that a local inquiry be held under Chap. XXV of the Code of Civil Procedure, the commission shall be issued to such person, not being below the rank of an Assistant or Deputy Collector, as the Collector of the district may, from time to time, select for the purpose. The Court shall issue a precept to the Collector, requiring him forthwith to nominate a fit person as above to conduct the enquiry, and the commission shall be issued to the person so nominated." (*Calcutta Gazette*, November 4th, 1885, p. 988.) under this section.

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There are some further noticeable changes in the former law made by the provisions of this chapter, which it will be convenient to mention here. Changes made in former law by this chapter.

(1) The provisions of secs. 33, Act X of 1859, and 30, Act VIII (B. C.) of 1869, providing for suits against agents for money, papers, or accounts being brought within one year after the determination of the agency, have not been introduced into this Act. Such suits will, therefore, be governed by the general law (*Annoda Pershad Roy* v. *Dwarka Nath Gangopadya*, I. L. R., 6 Calc., 754; *Degumber Mojumdar* v. *Kally Nath Roy*, I. L. R., 7 Calc., 654). Suits against agents done away with.

(2) The provisions of secs. 29, Act X of 1859, and 24, Act VIII (B. C.) of 1869, providing that suits may be brought by or against *surburakars* or *tehsildars* of estates held under *khas* management, have been omitted. Such suits must now be brought by or against the Secretary of State for India in Council (sec. 416, Act XIV of 1882). Suits by or against *surburakars* or *tehsildars* done away with.

(3) The provisions of sec. 105, Act VIII (B. C.) of 1869, allowing a Court to issue process free of charge, if satisfied that a party is unable to pay for such process, have been omitted. Free process.

(4) The provisions of sec. 103, Act VIII (B. C.) of 1869, prohibiting a review of judgment in Courts other than the High Court after the expiration of thirty days from the date of the judgment, have been omitted. The provisions of Chap. XLVII of Act XIV of 1882, and arts. 162 and 172, Sched. II, Act XV of 1877, are now applicable. Review of judgment.

(5) A Court can no longer issue immediate execution in cases of ejectment for arrears (see secs. 53, Act VIII (B. C.) of 1869, and 148 of the present Act). Immediate execution in cases of ejectment cannot issue.

Arrest before judgment.

(6) The provisions of sec. 50, Act VIII (B. C.) of 1869, prohibiting the issue of a warrant of arrest before judgment in a suit for arrears of rent due in respect of a transferable tenure have not been re-enacted.

Simultaneous execution against person and property may issue.

(7) The prohibition contained in secs. 17, Act VI (B. C.) of 1862, and 57, Act VIII (B. C.) of 1869, against the simultaneous issue of process of execution against both the person and the property of the judgment-debtor, has not been reproduced. Such simultaneous execution is, therefore, now legal; though it may be refused in the discretion of the Court (sec. 230, para. 1, Act XIV of 1882).

Further changes.

(8) The provisions of sec. 65 of Act VIII (B. C.) of 1869, providing that, in executing a decree for money not being money due as arrears of rent of a saleable under-tenure, execution should first be taken out against the person and moveable property of the judgment-debtor, and then against his immoveable property;—of sec. 61, Act VIII (B. C.) of 1869, providing that a tenure should not be sold in execution while a warrant of execution, previously issued against the person or moveable property of the judgment-debtor, remained in force;—and of sec. 64, Act VIII (B. C.) of 1869, providing that a tenure may not be sold in execution of a decree obtained by a co-sharer for his share of the rent until the judgment-debtor's moveable property within the jurisdiction of the Court shall have been seized and sold,—have been omitted in this Act. A decree-holder would, therefore, seem to be now entitled to execute his decree in any way that is lawful under the Code of Civil Procedure, except that a landlord cannot now eject his tenant otherwise than in accordance with the provisions of this Act.

Execution may be taken out in any way lawful under Civil Procedure Code.

Payment into Court after institution of suit.

(9) The provisions of secs. 48 and 49, Act VIII (B. C.) of 1869, as to payment into Court after the institution of a suit, of money, tendered or not tendered, as the case may be, before action brought, have been omitted, the provisions of secs. 376 to 379 of Act XIV of 1882 being apparently considered sufficient for such cases.

CHAPTER XIV.

Sale for Arrears under Decree.

The provisions of this chapter do not apply to *patni tenures*, which remain substantially unaffected by this Act. They will still continue to be saleable under the special procedure provided for their sale by Reg. VIII of 1819. Act VIII (B.C.) of 1865 also is not repealed

by this Act, so that tenures other than *patnis*, held immediately under the zemindar, and upon which the right of selling or bringing to sale for an arrear of rent may have been specially reserved by stipulation in the engagements interchanged on the creation of the tenure, continue saleable after decree, in the same way as *patni* taluks.

159. Where a tenure or holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this chapter as "protected interests," but with power to annul the interests defined in this chapter as "incumbrances:"

General powers of purchaser as to avoidance of incumbrances. Sec. 16, Act VIII, B.C., 1865. Sec. 66, Act VIII, B. C., 1869.

Provided as follows :—

(*a*) a registered and notified incumbrance within the meaning of this chapter shall not be so annulled except in the case hereinafter mentioned in that behalf ;

(*b*) the power to annul shall be exercisable only in manner by this chapter directed.

"*Where a tenure or holding is sold in execution of a decree for arrears due in respect thereof.*"—When a tenure is sold in execution of a decree for arrears of rent, under Act VIII (B.C.) of 1865, the tenure itself passes, and not merely the right, title, and interest of the tenant, whose name is registered in the zemindar's books (*Fatima Khatoon* v. *Collector of Tipperah*, 13 W. R., 433). In *Golam Chunder Dey* v. *Nuddiar Chand Adhikaree* (16 W. R., 1), it is said that, at a sale under sec. 105, Act X of 1859, the decree-holder sells a definite thing, *viz.*, the under-tenure. When, in execution of a decree against one of several joint holders of a tenure, it is clear that what is sold is the interest of the judgment-debtor only, the sale must be confined to that interest only. But if the judgment-debtor has been sued as representing the ownership of the whole tenure, and the sale, although purporting to be of the right, title, and interest of the judgment-debtor only, was intended to be, and in justice and equity ought to operate as a sale of the tenure, the whole tenure must be considered as having passed by the sale (*Jeo Lal Sing* v. *Gunga Pershad*, I. L. R., 10 Calc., 996). But in *Dwarkanath* v. *Aloka Chunder Seal* (I. L. R., 9 Calc., 641),

What passes at a sale.

it was held, on a construction of a sale-certificate and a proclamation of sale purporting to be under secs. 59 and 60 of the Rent Act (Bengal Act VIII of 1869), that what passed by the sale was not an under-tenure, but merely the right, title, and interest of the judgment-debtor,—the declaratory portion of a sale-proclamation not being by itself sufficient to override the description of the property in the body of the document.

Protected interests

160. The following shall be deemed to be protected interests within the meaning of this chapter:—

(*a*) any under-tenure existing from the time of the Permanent Settlement ;

(*b*) any under-tenure recognized by the settlement-proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement ;

(*c*) any lease of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made ;

(*d*) any right of occupany ;

(*e*) the right of a non-occupancy-raiyat to hold for five years at a rent fixed under Chapter VI by a Court, or under Chapter X by a Revenue-officer ;

(*f*) any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred ; and

(*g*) any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

The interests referred to in cls. (*a*), (*b*), and (*c*) are protected under a sale for arrears of revenue. They are, therefore, *a fortiori* entitled to protection under a sale for rent. The interests referred to in cls. (*d*), (*f*), and (*g*) were protected under sales for rent under the former law (sec. 16, Act VIII, B. C., of 1865; and sec. 66, Act VIII, B. C., of 1869). The interest referred to in cl. (*e*) has been created by this Act.

The interests referred to in cl. (*c*) are protected, subject to the proviso laid down in cl. (4), sec. 167, that if a purchaser has power, under this chapter, to annul all incumbrances (sec. 165), he may sue to enhance the rent of the land, which is the subject of the protected interest, unless it has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land. The benefit of the fourth exception to sec. 37, Act XI of 1859 (which applies to the interests specified in cl. (*c*) of this section), must be limited to improvements effected *bonâ fide* and to permanent buildings erected before the revenue-sales, and should not be conceded to anything subsequently constructed, or which appears to have been constructed merely for the purpose of defeating the rights of an auction-purchaser. Subject to this reservation, it does not matter whether the improvements have been effected by the present holder or by some previous occupier (*Ajgur Ali* v. *Asmut Ali*, I. L. R., 8 Calc., 110).

Meaning of "incumbrance" and "registered and notified incumbrance."

161. For the purposes of this chapter—

(*a*) the term "incumbrance," used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in the last foregoing section;

This is new.

(*b*) the term "registered and notified incumbrance," used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by a registered instrument of which a copy has, not less than

three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided.

Incumbrances may be (1) registered and notified; (2) registered and unnotified; and (3) unregistered and unnotified. A purchaser at a sale under sec. 165 can annul incumbrances of all these three classes. A purchaser at a sale under sec. 164 can annul incumbrances of the second and third classes only. The provision for the registration of these incumbrances has been made with the view of preventing sham incumbrances being set up after the sale of the tenure or holding.

"*In manner hereinafter provided.*"—The copy of the incumbrance will be served on the landlord in the manner prescribed by the Local Government, by Rule 3, Chap. I of the Rules given in Appendix I.

Application for sale of tenure or holding.

162. When a decree has been passed for an arrear of rent due for a tenure or holding, and the decree-holder applies under section 235 of the Code of Civil Procedure for the attachment and sale of the tenure or holding in execution of the decree, he shall produce a statement showing the pargana, estate and village in which the land comprised in the tenure or holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree.

XIV of 1882.

This is new.

Particulars to be specified in applications for execution.

Section 235 of the Code of Civil Procedure provides, that an application for execution shall be in writing and verified, and shall contain, in a tabular form, (*a*) the number of the suit; (*b*) the names of the parties; (*c*) the date of the decree; (*d*) whether any appeal has been preferred; (*e*) whether any and what adjustment of the matter in dispute has been made subsequently to the decree; (*f*) whether any and what previous applications have been made for execution of the decree, and with what result; (*g*) the amount, with the interest, if any, due upon the decree, or other relief granted thereby; (*h*) the amount of costs, if any, awarded; (*i*) the name of the person against whom execution is sought; and (*j*) the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, by arrest and imprisonment of the person named in the application, or by the attachment of his property, or otherwise.

When a decree has been passed for an arrear of rent due in respect of an under-tenure transferable by its own title-deeds, or by the custom of the country, the decree-holder is not bound to bring that under-tenure to sale in execution before he can proceed against other immoveable property belonging to his judgment-debtor (*Kisto Ram Roy* v. *Janokee Nath Roy*, I. L. R., 7 Calc., 748).

Order of attachment and proclamation of sale to be issued simultaneously.

*XIV of 1882. Sec. 105, Act X, 1859. Sec. 4, Act VIII. B. C., 1865. Sec. 59, Act VIII. B. C., 1869.

163. (1) Notwithstanding anything contained in the Code of Civil Procedure,* when the decree-holder makes the application mentioned in the last foregoing section, the Court shall, if under section 245 of the said Code it admits the application and orders execution of the decree as applied for, issue simultaneously the order of attachment and the proclamation required by section 287 of the said Code.

(2) The proclamation shall, in addition to stating and specifying the particulars mentioned in section 287 of the said Code, announce—

(*a*) in the case of a tenure or a holding of a raiyat holding at fixed rates, that the tenure or holding will first be put up to auction, subject to the registered and notified incumbrances, and will be sold, subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances; and

(*b*) in the case of an occupancy-holding, that the holding will be sold with power to annul all incumbrances.

(3) The proclamation shall, besides being made in the manner prescribed by section 289 of the said Code, be published by fixing up a copy thereof in a conspi-

cuous place on the land comprised in the tenure or holding ordered to be sold, and shall also be published in such manner as the Local Government may, from time to time, direct in this behalf.

(4) Notwithstanding anything contained in section 290 of the said Code, the sale shall not, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days, calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold.

The particulars mentioned in sec. 287 of the Code of Civil Procedure are: (*a*) the property to be sold; (*b*) the revenue assessed upon the estate or part of the estate, when the property to be sold is an interest in an estate, or part of an estate, paying revenue to Government; (*c*) any incumbrance to which the property is liable; (*d*) the amount for the recovery of which the sale is ordered; and (*e*) every other thing which the Court considers material for the purchaser to know in order to judge of the nature and value of the property.

Sale of tenure or holding, subject to registered and notified incumbrances, and effect thereof.

164. (1) When a tenure or a holding at fixed rates has been advertised for sale under the last foregoing section, it shall be put up to auction, subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure or holding shall be sold subject to such incumbrances.

This is new.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance upon the tenure or holding not being a registered and notified incumbrance.

A portion of a tenure cannot be sold under sec 64, Bengal Act VIII of 1869, so as to give the purchaser the same privileges as he would

acquire by the purchase of an entire tenure under secs 59 and 60 (*Reily* v. *Hur Chunder Ghose*, I. L. R, 9 Calc., 722).

165. (1) If the bidding for a tenure or a holding at fixed rates put up to auction under the last foregoing section does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation under section 289 of the Code of Civil Procedure, announcing that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement ; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances.

Sale of tenure or holding with power to avoid all incumbrances, and effect thereof.

XIV of 1882.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance on the tenure or holding.

This is new.

166. (1) When an occupancy-holding has been advertised for sale under section 163, it shall be put up to auction and sold with power to avoid all incumbrances.

Sale of occupancy holding with power to avoid all incumbrances, and effect thereof.

(2) The purchaser at a sale under this section may, in manner provided by the next following section, and not otherwise, annul any incumbrance on the holding.

This is new.

167. (1) A purchaser having power to annul an incumbrance under any of the foregoing sections and

Procedure for annulling incum-

brances under the foregoing sections.

desiring to annul the same, may, within one year from the date of the sale or the date on which he first has notice of the incumbrance, whichever is later, present to the Collector an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3) When an application for service of a notice is made to the Collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

(4) When a tenure or holding is sold in execution of a decree for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in section 160, clause (*c*), the purchaser may, if he has power under this chapter to avoid all incumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

This sub-section shall not apply to land which has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

This is new.

The provisions of this section are in accordance with the general rule, that the effect of a sale is not *ipso facto* to annul and avoid incumbrances, but to render them voidable at the option of the purchaser. This principle applies to sales for arrears of revenue (*Titu Bibi* v. *Mohesh Chunder Bagche*, I. L. R., 9 Calc., 683; 12 C. L. R., 304).

For the mode of service of the notice of the incumbrance, cl. (3), see Appendix I.

168. (1) The Local Government may, from time to time, by notification in the official Gazette, direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of decrees for rent due on them shall, before being put up with power to avoid all incumbrances, be put up, subject to registered and notified incumbrances, and may by like notification rescind any such direction.

Power to direct that occupancy-holdings be dealt with under foregoing sections as tenures.

(2) While any such direction remains in force in respect of any local area, all occupancy-holdings, or, as the case may be, occupancy-holdings of the specified class in that local area, shall, for the purposes of sale under the foregoing sections of this chapter, be treated in all respects as if they were tenures.

This is new.

The Local Government has not exercised the power of directing that occupancy-rights shall be sold subject to incumbrances in any local area.

169. (1) In disposing of the proceeds of a sale under this chapter, the following rules, instead of those prescribed by section 295 of the Code of Civil Procedure, shall be observed, that is to say,—

Rules for disposal of the sale-proceeds.

XIV of 1882.

(*a*) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale;

(*b*) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made;

(*c*) if there remains a balance after these sums have been paid, there shall be paid to the decree-

holder therefrom any rent which may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of the sale ;

(*d*) the balance (if any) remaining after the payment of the rent mentioned in clause (*c*) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.

(*z*) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (*c*), the Court shall determine the dispute, and the determination shall have the force of a decree.

This is new.

A suit for a share of the proceeds of the sale of a tenure sold in execution of a decree for arrears of rent is not cognizable by a Small Cause Court (*Ram Coomar Sen* v. *Ram Comul Sen*, I. L. R., 10 Calc., 388).

Tenure or holding to be released from attachment only on payment into Court of amount of decree with costs, or on confession of satisfaction by decree-holder.

170. (1) Sections 278 to 283 (both inclusive) of the Code of Civil Procedure* shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

This is new.

Sections 278 to 283 of the Civil Procedure Code deal with claims to attached property and their disposal.

*XIV of 1882.

(2) When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court.

(3) The judgment-debtor or any person having in the tenure or holding any interest voidable on the sale may pay money into Court under this section.

"*Any person having in the tenure or holding an interest voidable on the sale.*"—When an under-tenure has been transferred, but the transfer is not registered in the serishtah of the zemindar or superior tenant, the transferee is, nevertheless, entitled as a person interested in the protection of the tenure to stop its sale in execution of a decree under the Act VIII, B. C., of 1865, by paying into Court the amount of the decree (*Anund Lal Mookerjee* v. *Kalika Pershad Misser*, 20 W. R., 59). But he will be bound by the sale, and cannot set up a title which he has acquired by a previous sale (*Sham Chand Koondoo* v. *Brojonath Pal Chowdhry*, 21 W. R., 94).

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Amount paid into Court to prevent sale to be in certain cases a mortgage-debt on the tenure or holding.

171. (1) When any person having, in a tenure or holding advertised for sale under this chapter, an interest which would be voidable upon the sale, pays into Court the amount requisite to prevent the sale,—

(*a*) the amount so paid by him shall be deemed to be a debt bearing interest at twelve per centum per annum, and secured by a mortgage of the tenure or holding to him ;

(*b*) his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent; and

(*c*) he shall be entitled to possession of the tenure or holding as mortgagee of the tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

This is new.

This section extends to tenures and holdings generally the provisions of sec. 13, Reg. VIII of 1819, with regard to the staying of *patni*

sales and the recovery of sums paid into Court for the purpose. A *darpatnidar* can recover such a deposit by a regular suit (*Luckinarain Mitter* v. *Khettro Pal Singh Roy*, 13 B. L. R., 146), and can deduct the amount from the rent claimed (*Nobo Gopal Sircar* v. *Srinath Bandopadhya*, I. L. R., 8 Calc., 877; 11 C. L. R., 37). He may similarly deduct from the rent any sum which he may have paid, not into Court, but direct to the zemindar, in order to stay the sale of the *patni* (*Tariny Dabee* v. *Shama Churn Mitter*, I. L. R., 8 Calc., 954).

Remedies of persons whose interests are affected by sale.

"*Any other remedy to which any such person would be entitled.*"—A suit by an unregistered holder will lie in a Civil Court to set aside the sale of a tenure sold in execution of a decree for rent under Act X of 1859 after the money due upon the decree was deposited, sec. 151 of that Act notwithstanding (*Sheik Afzul Ali* v. *Lalla Gurnarain*, 6 W. R., Act X, 59; B. L. R., F. B., 519). The purchaser of an under-tenure may sue in the Civil Court to set aside a sale of the under-tenure in execution of a decree for arrears of rent under Act X of 1859, on the ground that such decree was obtained by fraud subsequently to his purchase (*Gunga Dass Dutt* v. *Ram Narain Ghose*, B. L. R., F. B., 625). An undertenant, who has saved the superior tenure from sale by depositing the amount of rent due, not only has the security of the tenure which he purchases, but he also has a right to recover the amount deposited by him as a loan in an ordinary suit (*Ambica Debi* v. *Pran Hari Das*, 4 B. L. R., 77). The plaintiff purchased under a private conveyance from the registered tenant of a permanent transferable interest in land, such as is described in sec. 26 of Bengal Act VIII of 1869, but no notice of the transfer was given to the zemindar. The zemindar subsequently brought a suit against the tenant for arrears of rent, and obtained a decree, in execution of which he caused the tenure to be sold, and himself became the purchaser. The plaintiff took proceedings under sec. 311 of the Civil Procedure Code to set aside the sale, but his application was rejected, on the ground—an erroneous one—that he was not a proper party to take such proceedings, and he did not appeal against the order rejecting it. *Held*, in a suit brought against the zemindar and the tenant to set aside the sale, that, in absence of fraud, the suit was not maintainable. The plaintiff might have satisfied the rent-decree, and so prevented the sale, or he might have appealed against the order rejecting his application to set it aside; but having done neither, and the zemindar having had no notice of the transfer, the plaintiff was not entitled to treat the proceedings in the rent-suit as a nullity on the ground that he

was not a party to that suit (*Panye Chunder Sircar* v. *Hem Chunder Choudhry*, I. L. R., 10 Calc., 496).

172. When a tenure or holding is advertised for sale under this chapter in execution of a decree against a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court, in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

Inferior tenant paying into Court may deduct from rent.

Sec. 2. Act VIII, B. C., 1865. Sec. 62. Act VIII. B. C., 1869.

This extends to any inferior tenant one of the remedies open to a *darpatnidar* who has saved the *patni* from sale by depositing money in Court (*Nobo Gopal Sircar* v. *Srinath Bandopadhya*, I. L. R., 8 Calc., 877; 11 C. L. R., 37).

173. (1) Notwithstanding anything contained in section 294 of the Code of Civil Procedure,* the holder of a decree in execution of which a tenure or holding is sold under this chapter may, without the permission of the Court, bid for or purchase the tenure or holding.

Decree-holder may bid at sale; judgment-debtor may not.

*XIV of 1882.

(2) The judgment-debtor shall not bid for or purchase a tenure or holding so sold.

(3) When a judgment-debtor purchases by himself or through another person a tenure or holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale, and the costs of the application and order, and any deficiency of price which may

happen on the re-sale, and all expenses attending it, shall be paid by the judgment-debtor.

This is new.

In consequence of the provisions of cl. (2), a judgment-debtor, bidding or purchasing a tenure or holding at a sale under this chapter, will render himself liable to the penalty provided in sec. 185, Indian Penal Code.

Application by judgment-debtor to set aside sale.

174. (1) Where a tenure or holding is sold for an arrear of rent due thereon, then, at any time within thirty days from the date of sale, the judgment-debtor may apply to have the sale set aside, on his depositing in Court, for payment to the decree-holder, the amount recoverable under the decree with costs, and, for payment to the purchaser, a sum equal to five per centum of the purchase-money.

(2) If such deposit is made within the thirty days, the Court shall pass an order setting aside the sale, and the provisions of section 315 of the Code of Civil Procedure shall apply in the case of a sale so set aside:

XIV of 1882.

Provided that, if a judgment-debtor applies under section 311 of the Code of Civil Procedure to set aside the sale of his tenure or holding, he shall not be entitled to make an application under this section.

XIV of 1882.

XIV of 1882.

(3) Section 313 of the Code of Civil Procedure shall not apply to any sale under this chapter.

This is new.

The effect of cl. (1) is, that if the judgment-debtor can, within thirty days of the sale, raise the money, he can have the sale set aside, notwithstanding that there has been no irregularity in publishing or conducting it. Section 315, Act XIV of 1882, provides for the return of the purchase-money (with or without interest, as the Court may direct) on the setting aside of a sale. The order for the repayment of the purchase-money with interest (if any is allowed) may be enforced as a decree.

Section 311 provides for the setting aside of a sale on the ground of irregularity in publishing or conducting it, provided the applicant can prove that he has sustained substantial injury by reason of the irregularity. It was held under the former law that sales of under-tenures under the rent law could be set aside on this ground (*Azizoonnessa Khatoon* v. *Gora Chand Dass*, I. L. R., 7 Calc., 163).

Section 313 deals with applications to set aside sales on the ground of the judgment-debtors having no saleable interest in the property sold. Sales of tenures or holdings cannot be set aside on this ground, as "the rent is a first charge" upon them (sec. 65), and they are liable to be sold for arrears of rent due in respect of them, no matter in whose hands they may be at the time of their sale.

In certain circumstances a sale has been held not to pass the tenure sold. Thus, in *Nobin Chunder Sen* v. *Nobin Chunder Chuckerbortti* (22 W. R., 46), a suit by an auction-purchaser to obtain *khas* possession of an under-tenure, which had been sold under Act VIII, B. C., of 1869, was dismissed on the ground that the suit in which the zemindar had obtained the decree was a fraudulent one, and the purchaser knew that it had been against the wrong party. In special appeal, the provisions of Act X of 1859, sec. 106, were pleaded in justification of the zemindar; but it was held that he could not bring such a suit against a person other than the one whom he knew to be the proprietor of the under-tenure, and from whom for a series of years he had been receiving rent.

Registration of certain instruments creating incumbrances.

175. Notwithstanding anything contained in Part IV of the Indian Registration Act, 1877,* an instrument creating an incumbrance upon any tenure or holding which has been executed before the commencement of this Act, and is not required by section 17 of the said Registration Act to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act.

*III of 1877.

This is new.

Notification of incumbrances to landlord.

176. Every officer who has, whether before or after the passing of this Act, registered an instrument executed

by a tenant of a tenure or holding and creating an incumbrance on the tenure or holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Local Government may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

This is new.

For the manner of service of the copy of the instrument on the landlord, see Rule 3, Chap. I, Appendix I.

Power to create incumbrances not extended.

177. Nothing contained in this chapter shall be deemed to enable a person to create an incumbrance which he could not otherwise lawfully create.

CHAPTER XV.

CONTRACT AND CUSTOM.

Restrictions on exclusion of Act by agreement.

178. (1) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act—

(*a*) shall bar in perpetuity the acquisition of an occupancy-right in land, or

(*b*) shall take away an occupancy-right in existence at the date of the contract, or

(*c*) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or

(*d*) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

(2) Nothing in any contract made between a landlord and a tenant since the 15th day of July, 1880, and

before the passing of this Act shall prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land.

(3) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall—

(*a*) prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land ;

(*b*) take away or limit the right of an occupancy-raiyat to use land as provided by section 23;

(*c*) take away the right of a raiyat to surrender his holding in accordance with section 86;

(*d*) take away the right of a raiyat to transfer or bequeath his holding in accordance with local usage;

(*e*) take away the right of an occupancy-raiyat to sublet subject to and in accordance with the provisions of this Act;

(*f*) take away the right of a raiyat to apply for a reduction of rent under section 38 or section 52;

(*g*) take away the right of a landlord or a tenant to apply for a commutation of rent under section 40; or

(*h*) affect the provisions of section 67 relating to interest payable on arrears of rent:

Provided as follows:—

(i) nothing in this section shall affect the terms or conditions of a lease granted *bonâ fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would under Chapter V be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right;

(ii) when a landlord has reclaimed waste land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a raiyat, nothing in this Act shall affect the terms of any contract whereby a raiyat is prevented from acquiring an occupancy-right in the land or part during a period of thirty years from the date on which the land or part is first let to a raiyat;

(iii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of orchard land with agricultural crops.

This is new.

The 15th July, 1880, mentioned in sub-sec. (2), is the date of the Government orders directing the publication of the Rent Law Commission's Report and Draft Bill.

The provisions of this section place very considerable restrictions on the freedom of contract between landlord and tenant, but only such restrictions as, in the opinion of the framers of this Act, are essential to the well-being of the peasantry in Bengal.

The effect of provisos (i) and (ii) is to leave reclamation leases wholly to contract, except that they do not ordinarily bar the acquisition of an occupancy-right which may have grown up during the lease. But in cases in which waste land has been reclaimed by the landlord himself, no occupancy-rights can be acquired in it for the first thirty years after the letting of it to raiyats, if a stipulation to that effect is made in the contract. Under the former law, it was held that when, on such leases, a reduced rent is charged for the first few years, and it is said that the rent is to be at a certain rate as the full rent, such rent is not liable to enhancement (*Huro Persad Roy Chowdry* v. *Chundee Churn Boyragee*, I. L. R., 9 Calc., 505; 12 C. L. R., 251; *Soorasoondery Dabee* v. *Golam Ali*, 15 B. L. R., 125 note; 19 W. R., 142).

Permanent mukarrari leases.

179. Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent

mukarrarí lease on any terms agreed on between him and his tenant.

Proprietors have long had this right. It is now expressly extended to the holders of permanent tenures.

Utbandi, chur and dearah lands.

180. (1) Notwithstanding anything in this Act, a raiyat—

(*a*) who in any part of the country where the custom of útbandi prevails, holds land ordinarily let under that custom and for the time being let under that custom, or

(*b*) who holds land of the kind known as chur or dearah,

shall not acquire a right of occupancy—

in case (*a*), in land ordinarily held under the custom of útbandi and for the time being held under that custom, or

in case (*b*), in the chur or dearah land,

until he has held the land in question for twelve continuous years; and, until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(2) Chapter VI shall not apply to raiyats holding land under the custom of útbandi in respect of land held by them under that custom.

(3) The Collector may, on the application of either the landlord or the tenant or on a reference from the Civil Court, declare that any land has ceased to be chur or dearah land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

This is new.

An *útbandi* tenancy, also sometimes called a *nuksan jote*, is a tenancy from year to year, and sometimes from season to season, the rent being

regulated according to the area under cultivation, by the appraisement of the crop on the ground, and according to its character. So far it resembles the tenancy by crop appraisement of the *bhaoli* system; but there is between them this marked difference that, while in the latter the land does not change hands from year to year, in the former it may. The *útbandi* system prevails in the district of Nuddea. Occupancy-rights could always be acquired in *útbandi* lands (*Premanund Ghose* v. *Surendro Nath Roy*, 20 W. R., 329), and may now be acquired in them, as well as in *chur* (alluvial) and *dearah* lands, but the Act makes this difference between the tenants of *útbandi* and *chur* and *dearah* lands and the tenants of ordinary lands, that the raiyats of the former class of lands must hold the same lands for twelve years before acquiring occupancy-rights in them, while the raiyats of ordinary lands acquire occupancy-rights in all the land they hold in a village, if they have held any land for twelve years in that village. This section further lays down that, until the tenant of *útbandi* and of *chur* or *dearah* lands has acquired a right of occupancy, he shall be liable to pay such rent for his holding as may be agreed upon between him and his landlord, and that Chap. VI, which relates to non-occupancy-raiyats, shall not apply to him. The result of these provisions is, that, for the first twelve years of his holding, such a tenant is neither a "settled," nor a non-occupancy, raiyat. His position is exactly that of a tenant-at-will under the old law, except that he cannot now be ejected otherwise than in execution of a decree (sec. 89), or in other words, after a suit.

Halhasili tenures

It was at one time proposed to make special provisions with regard to *halhasili* tenures, which, like tenancies under the *útbandi* system, are tenancies from year to year, but in which the rent varies, sometimes according to the area of land cultivated, and sometimes according to the crop raised each year. But as such tenancies were found to be in a transition stage, and well advanced towards the status of ordinary *raiyati* holdings, from which they were not always distinguishable, it was determined to make no special rules with regard to them, but to let the ordinary provisions of the Act apply to them.

Saving as to service-tenures.

181. Nothing in this Act shall affect any incident of a ghátwálí or other service-tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure

which, before the passing of this Act, was not capable of being transferred or bequeathed.

This is new.

Ghatwali tenures.

The law relating to ghátwálí tenures is to be found in Reg. XXIX of 1814 and Act V of 1859. There are numerous decisions of the High Court as to the incidents of ghátwálí tenures. Most of them will be found enumerated in the recent High Court decision of *Anando Rai* v. *Kali Persad Sing* (I. L. R., 10 Calc., 677), in which it was laid down that, in dealing with a ghátwálí tenure, the Court must have regard to the nature of the tenure itself and to the rules of law laid down in regard to such tenures, and not to any particular school of law, or the customs of any particular family, and that a ghátwálí tenure, being created for a specific purpose, has its own particular incidents, and cannot be subject to any system of law affecting only a particular class or family.

As ghátwálí tenures are not affected by this Act, it is unnecessary further to notice those decisions; but it may be convenient here to note that it is now settled that, as long as ghátwáls are able and willing to perform the services for which their tenures were granted to them, their tenures cannot be put an end to (*Kolodeep Narain Sing* v. *Government of India*, 14 Moo. I. A., 247; 11 B. L. R., P. C., 71; *Lilanund Sing* v. *Thakur Monorunjun Sing*, *Thakur Monorunjun Sing* v. *Lilanund Sing*, 13 B. L. R., P. C., 124); nor their rents enhanced (*Lilanund Sing Bahadur* v. *Thakur Monorunjun Sing*, I. L. R., 3 Calc., 259), on the ground that the services are no longer required. But the dismissal of a ghátwál will carry with it the forfeiture of his tenure (*Secretary of State* v. *Poran Singh*, I. L. R., 5 Calc., 740).

Service-tenures.

The law relating to *chokidari chakeran* lands will be found in secs. 48 and 49, Act VI of 1870 (B. C.), and sec. 375 of Act V of 1876 (B. C.) The subject of service-tenures is explained in the case of *Forbes* v. *Mir Mohamed Taki* (5 B. L. R., 529) and in the recent case of *Hurrogobind Raha* v. *Ramrutno Dey* (I. L. R., 4 Calc., 67), where it was laid down that a distinct refusal by a tenant to perform services incidental to his holding renders him liable to ejectment. In the same case, a doubt was expressed as to whether rights of occupancy could accrue in lands held under a service-tenure, but the point was not decided.

Homesteads.

182. When a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of

his tenancy of the homestead shall be regulated by local custom or usage, and, subject to local custom or usage, by the provisions of this Act applicable to land held by a raiyat.

This is new.

When a raiyat holds his homestead as part of his holding as a raiyat, the general provisions of this Act will apply as well to his homestead as to the land which he uses exclusively for purposes of cultivation. It is to be noted that the question whether a raiyat holds his homestead as part of his holding as a raiyat, or whether he holds his agricultural land as part of his homestead, will be a question of fact which the Courts will have to decide. The rule laid down in *Rani Chanddessuri* v. *Gheenah Pandey* (24 W. R., 153) may, perhaps, help them to decide this question. In this case it was held, that when the principal subject of the entire occupation is *bastu* land, the residue (if any) of the holding being entirely subordinate, the Small Cause Court has jurisdiction; in other words, the provisions of the Rent Law will not apply. But when the principal subject is agricultural land, the buildings being mere accessories thereto, the Small Cause Court will not have jurisdiction, and the provisions of the Rent Law will apply. When the rent for *bastu* lands was paid by the raiyats to the landlord separately from the rent paid for cultivated lands, but the tenure of the *bastu* lands was a *raiyati* tenure, it was held that, as a matter of law, the distinction in the mode of paying the rent did not exclude those lands from the operation of Act VIII of 1869, B. C. (*Poobose* v. *Rajoo Dhobi*, 22 W. R., 511). In *Naimuddi Joardar* v. *Moncrieff* (3 B. L. R., A. C., 283; 12 W. R., 140), it has been laid down that *bastu* lands (lands used for the sites of houses) situated in a town cannot form the subjects of suits for enhancement under the provisions of the Rent Law. The same has been held in *Kali Mohan Chatterji* v. *Kali Krishna Roy Chowdery*, 2 B. L. R., App., 39; 11 W. R., 183; *Modon Mohun Biswas* v. *Stalkart*, 9 B. L. R., 97; 17 W. R., 441; *Rani Doorgasoondari Dossee* v. *Oomdatunnissa*, 18 W. R., 235; 9 B. L. R., 101; *Khairudin Ahmod* v. *Abdul Baki*, 9 B. L. R., 103 note; *Church* v. *Ram Tonu Shaha*, 9 B. L. R., 105 note; *Kailash Chunder Sircar* v. *Woomanund Roy*, 24 W. R., 412; and *Poorna Chunder Roy* v. *Sadat Ali*, 2 C. L. R., 31. In the same case of *Naimuddi Joardar* v. *Moncrieff* (3 B. L. R., A. C., 283; 12 W. R., 140) above referred to, it was further laid down that *bastu* land, which is the site of a house occupied by a

Homestead land in towns.

raiyat engaged in cultivating the surrounding lands, does fall under the provisions of Act X of 1859, and is liable to enhancement. (See also *Abdul Hamid* v. *Dongaram Dey*, 3 B. L. R., App., 133.)

Case in which rent of land used for buildings is enhanceable.

An exception to the rule as to the rent of land used for buildings not being enhanceable under the Rent Law is, however, made by cl. 4, sec. 167 (*ante*), of this Act, which provides that a purchaser, at a sale under this Act, of a tenure or holding sold on account of arrears of rent due in respect thereof, may, if he has power to avoid all encumbrances, sue to enhance the rent of land, which is the subject of a "protected interest" of the nature specified in cl. (*c*), sec. 160. The protected interest of the nature specified in cl. (*c*), sec. 160, is "any lease of land whereon dwelling-houses, manufactories, "or other permanent buildings have been erected, or permanent "gardens, plantations, tanks, canals, places of worship, or burning or "burying grounds have been made."

Rights of occupancy in homestead land

It is also clear, that a raiyat acquires no right of occupancy under the Rent Law in homestead land held otherwise than as part of his holding as a raiyat, save by custom (*Mahar Ali Khan Pathan* v. *Ram Ruttun Sen*, 21 W. R., 400; *Rani Shurno Moyee* v. *Blumhardt*, 9 W. R., 552; *Ramdhan Khan* v. *Haradhan Paramanik*, 9 B. L. R., 107 note; 12 W. R., 404). But a raiyat may build houses on agricultural land, and still retain his right of occupancy in it; for, in *Prosonno Coomar Chatterjee* v. *Jagannath Bysack* (10 C. L. R., 25), it was held, that where land has, with the consent of the landlord, ceased to be agricultural, and the tenant has since built a homestead, or used part of it for tanks or gardens, the nature of the tenure is not thereby changed, nor is the tenant thereby deprived of any right of occupancy, which he might have acquired. And further it has been held, that where a landlord allows his lessee to invest capital in erecting buildings on land let for cultivation, and raises no objection for a considerable number of years, he will not be allowed to disturb the holding. The fact of buildings having been permitted, without objection, to stand on lands for a considerable number of years is *primâ facie* proof that the land had originally been leased for building purposes (*Brajanath Kundu Chowdery* v. *Stewart*, 8 B. L. R., 51; 16 W. R., 216). On the other hand, in *Prosonno Coomaree Debea* v. *Sheikh Rotton Bepary* (I. L. R., 3 Calc., 696), it was laid down that there is no law in this country which converts a holding at will from year to year, or for a term of years, into a permanent tenure, merely because the tenant, *without any arrangement with his landlord*, builds a dwelling-house upon

Whether possession of tenant in homestead land, not held as part of his holding as a raiyat, can be disturbed.

the land demised. This ruling was followed in the case of *Taruk-podo Ghosal* v. *Shyama Churn Napit* (8 C. L. R., 50), in which it was said, that there is no law in this country which gives anything of a protected tenure or holding to a person, who has occupied homestead land, however long may have been the period of his possession. In *Arut Sahoo* v. *Prandhone Pykura* (I. L. R., 10 Calc., 502) it was said, that the mere record of the name of a tenant, who was found in occupation of a particular piece of homestead land in settlement proceedings, and of the rent payable by him, does not invest him with any permanent title to hold it. Further, recently, in *Gungadhur Shikdar* v. *Ajimuddin Shah Biswas* (I. L. R., 8 Calc., 960; 11 C. L. R., 281), it has been held, that where land has been let for agricultural purposes, and it is found that buildings of a substantial nature have been erected thereon many years before by the defendant's ancestors, to whom the lands had been granted, the Court *may, if it thinks fit, presume* that the land was granted for building purposes, and that the grant was of a permanent character.

Local custom or usage as to homestead land.

As to "local custom or usage" with regard to *bastu* land, it is to be remarked that, in some parts of the country, this species of land is, by custom, held rent-free. (See Government of Bengal Report of 1884 on the Bengal Tenancy Bill, Vol. II, pp. 105 and 216.) In some parts, too, such holdings are, by custom, transferable (*Chunder Coomar Roy* v. *Kadermonee Dossee*, 7 W. R., 247; *Bani Madhub Bannerjee* v. *Jai Krishna Mookerjee*, 7 B. L. R., 152; S. C., 12 W. R., 495; *Durga Persad Misser* v. *Brindabun Sookul*, 7 B. L. R., 159).

It is to be particularly noticed that the provisions of this section apply only to raiyats, and that consequently other persons holding homestead land cannot take advantage of this section.

Saving of custom.

183. Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Illustrations.

(1) A usage under which a raiyat is entitled to sell his holding without the consent of his landlord is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That usage, accordingly, wherever it may exist, will not be affected by this Act.

(2) The custom or usage that an under-raiyat should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not

expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

This is new.

Effect of custom under former law.

By this section, the whole provisions of this Act are made subject to custom, usage, and customary right. The provisions of the former law were also liable to be overridden by custom, as laid down by Peacock, C. J., in the case of *Thakurani Dossee* v. *Bisheshor Mookerjee*, B. L. R., F. B., 326, in which he said, "that Act X of 1859 did not take away the right of any ryot who had a right, by grant, contract, prescription, or other valid title, to hold at a fixed rate of rent."

"The mode of proving custom is not very well understood in this country," it is said in the Rent Law Commission's Report, para. 12, "and, unfortunately, notwithstanding a *dictum* of Sir Barnes Peacock to the contrary, an idea got to prevail, that Act X had superseded all customs, and was intended to do away with all agricultural rights, except those specially mentioned and provided for in that Act. We believe that there are many local customs in this as well as in every other country, well understood by the people, recognized by the landlords, and susceptible of proof in the Courts of Justice, and we think it very desirable to make it clearly understood that the Bill is not intended to interfere with any of these, unless they have been expressly rescinded by, or are clearly inconsistent with, its provisions."

What "custom" is.

It is, however, difficult to say what "custom" is, and still more difficult to say by how many years' prevalence a custom can be held to be well established. A definition of "a custom" has been given by the Privy Council in the case of *Hur Purshad* v. *Sheo Dyal* (26 W. R., 55), in which it was said that "a custom is a rule, which, in a particular family *or district*, has, from long usage, obtained the force of law. It must be ancient, certain, and reasonable, and, being in derogation of the general rules of law, must be construed strictly." In *Lachman Rai* v. *Akbar Khan* (I. L. R., 1 Alla., 440), Turner, J., laid down, that a custom to be good must be definite; and in another case (*Lala* v. *Hera Lal Sing*, I. L. R., 2 Alla., 49) it was said, that "a custom, to be valid, must be ancient, must have been continued and acquiesced in, and must be reasonable and certain." There are rulings of the Calcutta High Court to the same effect. Thus, in the case of *Jameelah Khatoon* v. *Pagol Ram* (1 W. R., 250), it was said—"The plaintiff relies upon a custom, and unless he can show that the custom is undoubted and invariable, he is not entitled to a decree."

In the case of *Beni Madhub Banerjea* v. *Jai Kishen Mookerjee* (7 B. L. R., 152; S. C., 12 W. R., 495), Glover, J., said, that "a custom must be proved by strict evidence that what is sought to be established has existed unaltered and uninterrupted from time immemorial." In the same judgment, Glover, J., alluding to the case of *Chunder Comar Roy* v. *Peari Lal Bannerjea* (6 W. R., 190), in which it was said that a custom as to the transferableness of *khudkhast* jotes need not be absolutely invariable, observed that he doubted the correctness of the decision.

How "custom" has to be proved.

As to the evidence that will be sufficient to establish a custom, Grey, C. J., has said:—"Although in this country we cannot go back to that period which constitutes legal memory in England, *viz.*, the reign of Richard I, yet still there must be some limitation, without which a custom ought not to be held good. In regard to Calcutta I should say, that the Act of Parliament in 1773, which established this Supreme Court, is the period to which we must go back to found the existence of a valid custom . . . . . In regard to the mofussil, we ought to go back to 1793. Prior to that date there was no registry of the regulations, and the relics of them are exceedingly loose and uncertain. I admit that a usage for twenty years may raise a presumption in the absence of direct evidence of a usage existing beyond the period of legal memory" (*Doe d. Jago Mohan Rai* v. *Srimati Nimu Dasi*, Montriou's Cases of Hindu Law, 596). On this point the Calcutta High Court has said:—"In an enquiry as to whether tenures of a certain class are transferable according to local custom, it is sufficient if there is credible evidence of the existence and antiquity of the custom, and none to the contrary; there is no necessity for the witnesses to fix any particular time from which such tenures became transferable" (*Joy Kishen Mookerjea* v. *Doorga Narain Nag*, 11 W. R., 348). But the evidence of a few antagonistic witnesses will not prove a custom (*Joy Kishen Mookerjea* v. *Raj Kishen Mookerjea*, 1 W. R, 153); and in the case of *Inder Narain Chowdhry* v. *Mahomed Nojorooddeen* (W. R, Sp. No., 1864, p. 234) conflicting decisions of the subordinate Courts (three on one side and one on the other) were held not to prove the prevalence of the Mahomedan custom of pre-emption among the Hindus of Chittagong. In the case of *Lachman Rai* v. *Akbar Khan* (I. L. R., 1 Alla., 440), Turner, J., said:—"The most cogent evidence of custom is not that which is afforded by the expression of opinion as to the existence, but by the enumeration of instances in which the alleged custom has been acted upon, and by the proof afforded by

judicial or revenue records, or private accounts and receipts that the custom has been enforced."

The section, however, does not speak only of "custom." It makes use of the word "usage," and it is understood this expression was introduced with the object of giving Courts the power of taking cognizance of agricultural and local usages, though not so strictly proved as customs are apparently required to be. It has, however, not yet been settled what a usage is, or how it can be proved. In the absence of any rulings by the Courts of this country as to the difference between custom and usage, it may be of some use to refer to the distinction made by the English Courts on the point. The law of England regarding agricultural usages is expounded in *Wigglesworth* v. *Dallison* (1 Smith, L. C., 598, 7th Edit.), and its attendant train of decisions (Woodfall, L. and T., 707, 11th Edit.) "Usages," known as "customs of the country," it is said, "although not customs, if strictly so called, are usages existing generally in a district, and will, unless expressly or impliedly included by the contract, be imported into and regulate contracts of tenancy, although the contract be in writing or in deed." For a "custom of the country" or usage to have this legal force, it need not be proved to have existed from time immemorial. It will be established on proof of a usage reasonable and certain in its nature, and generally recognised and acted upon in a particular district, as, for example, the custom proved in *Wigglesworth* v. *Dallison* that a tenant for a term of years, which expires on the 1st of May of any year, should be entitled to the way-going crop. Almost every district and county in England has customs of this class. (See Cooke's Agricultural Tenancies, Dixon's Law of the Farm.) Another such usage is the tenant's right in some parts of the country to the trees he has planted.

Difference between custom and usage.

CHAPTER XVI.

LIMITATION.

184. (1) The suits, appeals and applications specified in Schedule III, annexed to this Act, shall be instituted and made within the time prescribed in that schedule for them respectively; and every such suit or appeal instituted, and application made, after the period of limitation

Limitation in suits, appeals, and applications in Sched. III.

so prescribed, shall be dismissed, although limitation has not been pleaded.

(2) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

This is new.

The classes of suits, specified in Sched. III annexed to this Act, are: suits (1) for ejectment of tenure-holders or raiyats for breach of a condition in respect of which there is a contract, expressly providing that ejectment shall be the penalty of such breach; (2) for arrears of rent, (*a*) when the arrear fell due before a deposit was made under sec. 61 on account of the rent of the same holding, (*b*) in other cases; and (3) for recovery of possession of land claimed by the plaintiff as an occupancy-raiyat.

Appeals to a District Judge, or to a Special Judge, and to a Commissioner, from orders of a Collector under this Act; and applications for the execution of decrees for sums not exceeding Rs. 500, exclusive of interest accruing after decree, except when execution has been prevented by the judgment-debtor's fraud, are also specified in Sched. III.

Provisions of Limitation Act (XV of 1877) applicable, where not specially barred.

To suits, appeals, and applications not specified in Sched. III, on the analogy of the High Court rulings in the cases of *Behari Lall Mookerjee* v. *Mongolanath Mookerjee* (I. L. R., 5 Calc., 110; 4 C. L. R., 371) and *Golap Chunder Nowluckha* v. *Krishto Chunder Dass Biswas* (I. L. R., 5 Calc., 314), the general provisions of Act XV of 1877 would seem to be applicable. "It is quite inaccurate," it is said in the last mentioned case, "to say that the new Limitation Act does not apply to cases under the Rent Law. What the Act says is this:—"When by any special or local law, now or hereafter in force in British India, a period of limitation is specially provided for any suit, appeal or application, nothing herein contained shall affect or alter the period so prescribed,—that is to say, the time within which the suit is to be brought remains unaffected by the Act of 1877. But nothing forbids the application of the other provisions, and specially of the provisions for computing the period of limitation contained in Part III of the new Act." (See also *Khoselal Mahton* v. *Gunesh Dutt*, I. L. R., 7 Calc., 690.)

185. (1) Sections 7, 8 and 9 of the Indian Limitation Act, 1877,* shall not apply to the suits and applications mentioned in the last foregoing section.

Portions of the Indian Limitation Act not applicable to such suits, &c.

(2) Subject to the provisions of this chapter, the provisions of the Indian Limitation Act, 1877,* shall apply to all suits, appeals, and applications mentioned in the last foregoing section.

* XV of 1877.

Disabilities of minority and lunacy inapplicable to rent-suits.

Section 7 provides, that when a person is a minor, insane, or an idiot, he may institute a suit on making an application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed by the law. Section 8 provides, that when one of several joint creditors or claimants is under a legal disability, and a discharge can be given without his concurrence, time will run against them all; but when no such discharge can be given, time will not run against any of them, until one of them becomes capable of giving such discharge without the concurrence of the others. Section 9 provides, that when once time has began to run, no subsequent disability or inability to sue stops it.

The Rent Commission have, in para. 161 (p. 80) of the Report, explained the reasons which have led to disability of minority being made inapplicable to rent-suits. "We think that a minor," they said, "ought not to be competent, on coming of age, to sue a ryot for rent which had accumulated during the whole period of his minority; that this kind of debt, which a poor man usually discharges year by year out of the produce of the year, ought not to be allowed to accumulate, and that if the manager of a minor's estate neglect his duty of realizing rents as they fall due, the minor's remedy ought to be an action for damages against such manager."

Rules of Limitation Act applicable in computing special periods of limitation.

Clause (2) follows the High Court rulings in the cases of *Behari Lall Mookerjee* v. *Mongolanath Mookerjee* (4 C. L. R., 371; I. L. R., 5 Calc., 110) and *Golap Chunder Nowluckha* v. *Kristo Chunder Dass Biswas* (I. L. R., 5 Calc., 314), and makes it clear that the special periods of limitation prescribed for suits, appeals, and applications specified in Sched. III of this Act are unaffected by the provisions of the Limitation Act of 1877. The rules contained in the Act for computing these special periods of limitation, as well as all its other provisions, except secs. 7, 8 and 9, are applicable to such suits, appeals, and applications. All rulings to the contrary effect are therefore

set aside. (See *Purran Chunder Ghose* v. *Mutty Lall Ghose Dahira*, I. L. R., 4 Calc., 50, and *Unnoda Persad Mookerjee* v. *Kristo Comar Moitro*, 19 W. R., 5.)

The provisions of Act XV of 1877, as pointed out above, *including* the provisions of secs. 7, 8 and 9, will further be applicable to all suits, appeals, and applications under the Rent Law not specified in Sched. III of this Act.

Gregorian calendar the same as English calendar

It may be useful to allude further here to one of these provisions of Act XV of 1877, *viz.*, to sec. 25, in which it is said, that "all instruments shall, for the purposes of the Act, be deemed to be made with reference to the Gregorian calendar." The Gregorian calendar here mentioned is simply the *new style*, introduced in England on the 2nd September 1752, correcting the error of 11 days which had arisen in computing the year according to the Julian, or old, style previously current. There is, therefore, no difference between the Gregorian calendar and the English calendar (see *Nilkanth* v. *Dattatraya*, I. L. R., 4 Bom., 103) as has sometimes been supposed to be the case (see Field's Digest, p. 57 note; Rent Law Commission Report, Vol. I, p. 80, para. 160, cl. 4). Section 25, Act XV of 1877, only applies to "instruments," but under cl. 4, sec. 2 of Act I of 1868 (The General Clauses Act), "year" and "month" must always be taken to mean a year and month reckoned according to the British calendar. The rulings of the High Court, in the cases of *Joy Mangal Sing* v. *Lal Sing Pal Sing*, 4 B. L. R., 53, App.; *Khasroo Mandar* v. *Prem Lal*, 9 B. L. R., App., 41; *Luchmeeput Sing* v. *Raj Coomaree Dabee*, 23 W. R., 275; and *Mahomed Elahi Buksh* v. *Brojo Kishor Sen*, I. L. R., 4 Calc., 497, which lay down that, in calculating periods of limitation in rent-cases, the computation must be made according to the English calendar, are, therefore, unaffected by anything in this Act.

Limitation in cases of suspension of relationship of landlord and tenant.

An important rule of limitation in rent-suits was laid down by the Privy Council in the case of *Rani Swarnamayi* v. *Shashi Mukhi Burmani* (12 Moo. I. A., 244; 11 W. R., P. C., 5; S. C., 2 B. L. R., P. C., 10). In this case, "a zemindar brought a *patni* tenure to sale under Reg. VIII of 1819. The *patnidar* was, thereupon, ousted, and the purchaser took possession of the *patni* tenure. The *patnidar* then successfully sued to have the sale reversed on the ground of irregularity, and recovered possession of the *patni* tenure, together with mesne profits, from the purchaser for the period of his possession. The zemindar subsequently sued the *patnidar* for rent for this period.

Such rent was barred, if the period of limitation contained in Act X of 1859 were to be applied without qualification. The Privy Council, however, held, that it was not barred; that the cause of action accrued at the time at which, the sale having been set aside, the obligation to pay this rent revived; that the *patnidar*, on being restored to possession, took back the estate subject to the obligation to pay the rent; and that the particular arrears must be taken to have become due in the year in which that restoration to possession took place" (Rent Law Commission Report, para. 162, p. 81). This ruling was followed in *Ishan Chandro Roy* v. *Khajah Ahsanullah*, 8 B. L. R., 537 note; 6 W. R., 79; in *Dindayal Pramanik* v. *Rada Kishori Debi*, 8 B. L. R., 536; 17 W. R., 415; and in *Mohesh Chunder Chakladar* v. *Gungamoni Dassee*, 18 W. R., 59. The Rent Law Commission state the rule to be deduced from this case of *Rani Swarnamayi* v. *Shashi Mukhi Barmani* thus:—"Where the result of the litigation between any persons is such that they are found to stand in the relation of landlord and tenant to each other, and to have stood in this relation while such litigation was pending, but until their mutual rights were finally determined by such litigation, such landlord was unable to sue such tenant for rent, the period of limitation for suing for any such rent shall be computed from the termination of such litigation." But in the above case of *Rani Swarnamayi* v. *Shashi Mukhi Barmani*, there are two points to be noticed: (1) the *patnidar* was out of possession, and the zemindar could not sue him for rent as long as he remained so; (2) the patnidar received mesne profits for the period for which rent was claimed. In subsequent cases, although the landlord had denied the continuance of the relationship of landlord and tenant, and attempted to put an end to such relation, the tenant was, nevertheless, not dispossessed. The High Court, therefore, decided that there was nothing to prevent the landlord from recovering the rent, and declined to follow the rule laid down by the Privy Council in the above-mentioned case (*Watson & Co.* v. *Dhanendro Chunder Mookerjee*, I. L. R., 3 Calc., 6; *Brojendro Coomar Roy* v. *Rakhal Chunder Roy*, *ib.*, 791; *Hurro Pershad Roy* v. *Gopaul Dass Dutt*, *ib.*, 817; *Harronath Roy Chowdry* v. *Goluck Nath Chowdry*, 19 W. R., 18; *Buroda Kant Roy Bahadoor* v. *Chunder Coomar Roy*, 23 W. R., 280; *Huro Persad Roy* v. *Gopal Dass Dutt*, I. L. R., 9 Calc., 255; 12 C. L. R., 129).

CHAPTER XVII.

SUPPLEMENTAL.

Penalties.

Penalties for illegal interference with produce.

186. (1) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force,—

(*a*) distrains or attempts to distrain the produce of a tenant's holding, or

(*b*) resists a distraint duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act, or

(*c*) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code. XLV of 1860.

(2) Any person who abets within the meaning of the Indian Penal Code the doing of any act mentioned in sub-section (1), shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code. XLV of 1860.

This is new.

See Secs. 447, 107 to 114 and 117 of the Indian Penal Code.

Agents and representatives of landlords.

Power for landlord to act through agent.

187. (1) Any appearance, application or act, in, before or to any Court or authority, required or authorized by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.

(2) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of or receive the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

(3) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

This is new.

This written authority must be stamped as a power-of-attorney under art. 50, Sched. I, Act I of 1879.

188. Where two or more persons are joint landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them.

Joint landlords to act collectively or by common agent.

This is new.

This section makes a considerable change in the former law. Under the old law, a co-sharer could collect his share of the rent separately with the consent of the tenant and of his other co-sharers, and such an arrangement might be proved either by direct proof, or by proof of usage, from which its existence might be presumed (*Guni Mahomed* v. *Moran* and *Doorga Pershad Mytee* v. *Joy Narain Hajra*, I. L. R., 4 Calc., 96). Any co-sharer could also sue for his share of the rent separately, whether he had been previously in the habit of so collecting his share of the rent or not, provided he made such of his co-sharers as would not join him as co-plaintiffs co-defendants in the suit. This can no longer be done. It has also been recently ruled that a part-proprietor of an estate could apply for measurement of its lands after making the remaining proprietors parties to the proceedings (*Abdul Hossain* v. *Lall Chand Mohtan*, I. L. R., 10 Calc., 36). The provisions of this section, however, set this ruling aside. Under

Separate suits by co-sharers for rent done away with.

A part-proprietor cannot apply for measurement.

the old law it was ruled, that a fractional shareholder is not entitled, under sec. 52, Act VIII (B. C.) of 1869, to maintain a suit for ejectment (*Tulsi Panday* v. *Lala Bachu Lal*, I. L. R., 9 Calc., 596; 12 C. L. R., 223; *Bollye Sattee* v. *Akram Ally*, I. L. R., 4 Calc., 961), and the law in this respect is unchanged. But it is only what a landlord is *under this Act required or authorized to do*, that a joint landlord cannot do when acting alone.

Rules under Act.

Power to make rules regarding procedure, powers of officers and service of notices.

189. The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act—

(1) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

(*a*) any power exercised by a Civil Court in the trial of suits;

(*b*) power to enter upon any land, and to survey, demarcate and make a map of the same, and any power exercisable by any officer under the Bengal Survey Act, 1875; and

V (B. C.) of 1875.

(*c*) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil; and

(2) to prescribe the mode of service of notices under this Act where no mode is prescribed by this or any other Act.

This is new.

The rules made by the Local Government under the provisions of this section will be found in Appendix I.

Procedure for making, publication and confirmation of rules.

190. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by any other authority, in the prescribed manner:

Provided that every such draft shall be published in the official Gazette.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

(6) All rules made under this Act may, from time to time, subject to the sanction (if any) required for making them, be amended, added to, or cancelled by the authority having power to make the same.

This is new.

The draft of the proposed rules made by the Local Government under this Act were published in the *Calcutta Gazette* of November 4th, 1885. It was then notified that they would be taken into consideration on December 7th, 1885. The rules made under the Act were finally published in the *Calcutta Gazette* of December 23rd. 1885.

Provisions as to temporarily-settled districts.

191. Where the area comprised in a tenure is situate in an estate which has never been permanently settled, nothing in this Act shall prevent the enhancement of the

Saving as to land held in a district not per-

manently settled.

rent upon the expiration of a temporary settlement of the revenue, unless the right to hold beyond the term of the settlement at a particular rate of rent has been expressly recognized in settlement-proceedings by a Revenue-authority empowered by the Government to make definitively or confirm settlements.

In temporarily-settled districts, "the Government has a right to raise its revenue on the occasion of a fresh settlement. Of this right, no act of the landlord can deprive it; and, accordingly, if the landlord were to be bound by a grant at fixed rates made by him so as to extend beyond the term of the settlement, the result would be that, on the occasion of a new settlement, he might be exposed to the risk of having to pay an enhanced revenue without the possibility of recovering it from his tenant." (Statement of Objects and Reasons, Bengal Tenancy Bill, *Gazette of India*, March 3, 1883, p. 132.)

Power to alter rent in case of new assessment of revenue.

192. When a landlord grants a lease, or makes any other contract, purporting to entitle the tenant of land not included in an area permanently settled to hold that land free of rent or at a particular rent, and while the lease or contract is in force—

(*a*) land-revenue is for the first time made payable in respect of the land, or

(*b*) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

a Revenue-officer may, notwithstanding anything in the contract between the parties, by order, on the application of the landlord or of the tenant, fix a fair and equitable rent for the land in accordance with the provisions of this Act.

This is new.

The object of the last clause of this section is to prevent the Government revenue of an estate being diminished by grants of rent-free land, which reduce the gross rental upon which the Government

revenue is assessed. It would seem, however, as if the object of the clause may be defeated owing to the use in it of the words "on the application of the landlord or of the tenant." For, if Government be not the landlord of the estate, as, for example, where the land, having been invalid lakhiraj land, is resumed and is being assessed to Government revenue, but the lakhirajdar continues to be the landlord, it will not be to the interest either of the landlord or of the tenant to make such an application, and under the terms of the clause, the Revenue-officer would then seem to be precluded from fixing a fair and equitable rent for the land. He may, however, fix a fair rent under sec. 104, sub-sec. 2.

Rights of pasturage, &c.

Rights of pasturage, forest-rights, &c.
Cl. 4, s. 23. Act X, 1859.

193. The provisions of this Act, applicable to suits for the recovery of arrears of rent, shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like.

"*For the recovery of arrears of rent.*"—From these words it may at first sight appear as if only the provisions of the Act relating to the recovery of arrears of rent are applicable to pasture land, forest-land, rights of fishery, and the like, and as if questions connected with the enhancement of rent, reduction of rent, acquisition of status, &c., that may arise regarding such land or rights, are left wholly unprovided for. This is not altogether the case. Under sec. 21 a raiyat acquires occupancy-rights in all land held by him "as a raiyat" in his village. If, therefore, he holds pasture-land, a tank, or thatching grass land as part of his holding as a raiyat, he may acquire rights of occupancy in them, and such land or tank will be subject to *all* the incidents of a raiyat's holding, the provisions of this section notwithstanding. Thus, in *Nidhi Krishen Bose* v. *Ram Dass Sen*, 20 W. R., 341, it was held, that a right of occupancy in the land includes the same right in respect of a tank appurtenant to the land. In *Fitzpatrick* v. *Wallace* (11 W. R., 231) it was held, that a right of occupancy could be gained in land used for the purpose of grazing horses. But the case is different when the tenant has merely a right to graze cattle, cut wood, catch fish, or cut the grass of thatching grass land, which grows spontaneously, and which he in no way cultivates (*Goor Dial* v. *Ramdut*, 1 Agra F.B.,15); in short, in such cases as he has only *profits à prendre* over the land. In these cases no rights of occupancy can be acquired, and

When rights of occupancy accrue in pasture-land, tanks and thatching grass land.

When rights of occupancy do not accrue.

the occupancy and enhancement provisions of the Act are inapplicable. Thus, there is no right of occupancy in, and Act X of 1859 does not apply to, a mere fishery or *julkur* (*Wooma Kant Sircar* v. *Gopal Singh*, 2 W. R., Act X, 19; *Bollye Sattee* v. *Akram Ally*, I. L. R., 4 Calc., 961). The provisions of Act X, which confer a right of occupancy, do not apply to a tank used for the preservation and rearing of fish, and not forming part of any grant of land, or any appurtenance of any land (*Sibo Jelya* v. *Gopal Chunder Chowdery*, 19 W. R., 200). A right of occupancy is not acquired in a tank, when the tank is the principal subject of the lease, and only so much land passes with it as is necessary for the banks (*Nidhi Krishna Bose* v. *Ram Dass Sen*, 20 W. R., 341). Where a jotedar had exercised rights of fishery over two *julkurs* for more than twelve years, not as the owner of the jote (with which the *julkurs* were not connected), but as a tenant under a landlord, it was held that such possession did not confer upon him a right of occupancy (*Sham Narain Chowdery* v. *Court of Wards*, 23 W. R., 432). Act X of 1859 does not entitle a lessor to raise the rent payable from a lessee on account of a right leased to the latter to collect lac insects from trees growing in the former's lands—*Gopal Chunder Singh Moorah* v. *Sunkuree Paharin*, 23 W. R., 458.

All provisions of Act for recovery of arrears not applicable.

"*As far as may be.*"—There are, of course, many provisions of this Act which, though relating to the recovery of arrears of rent, are inapplicable when the tenant has only a limited interest in land, as in the case of rights of pasturage, forest-rights, and rights of fishery. Thus, though a tenant may have a right to gather fruit from trees, or catch fish in a tank, the trees and the tank themselves cannot be attached and sold in execution of a decree for arrears of rent against the tenant. A tenant will necessarily have no right in the immoveable property itself over which he may have a *profit à prendre*; and so, in *Bissen Lal Dass* v. *Khyrunnissa Begum* (1 W. R., 78) it was held, that when a *julkur* dries up, the land does not, as a matter of course, become the right of the holder of the *julkur*.

Saving for conditions binding on landlords.

Tenant not enabled by Act to violate conditions binding on landlord.

194. Where a proprietor or permanent tenure-holder holds his estate or tenure, subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate or

tenure to do any act which involves a violation of that rule or condition.

This is new.

Were it not for this provision, a tenant might render his landlord liable to forfeiture of his estate or tenure or to a suit for damages. The condition must, of course, be consistent with the provisions of this Act. If a proprietor let his estate to an ijaradar on condition that he was to prevent the accrual of occupancy-rights, that condition would in no way affect the title of a raiyat to acquire such rights.

Savings for special enactments.

Savings for special enactments

195. Nothing in this Act shall affect—

(*a*) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act;

(*b*) any enactment regulating the procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue-authorities;

(*c*) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue;

(*d*) any enactment relating to the partition of revenue-paying estate;

(*e*) any enactment relating to *patní* tenures, in so far as it relates to those tenures; or

(*f*) any other special or local law not repealed either expressly or by necessary implication by this Act.

This is new.

Settlement law.

The laws relating to the powers and duties of Settlement-officers are Regs. VII of 1822, IX of 1825, and IX of 1833.

Realization of rent in Government and Wards' estates.

The enactments relating to the realization of rents in estates belonging to Government or under the management of the Court of Wards, or of the Revenue-authorities, are Acts VII (B. C.) of 1868

and VII (B. C.) of 1880. Under these Acts the Collector makes a certificate that the amount is due, and it can be executed as a decree, unless the tenant proceeds in the Civil Court to have it set aside. If he does so, he must proceed within a year of the service on him of a notice of its having been made and filed in the office of the Collector, and the tenant must have first stated in a petition to the Collector the grounds on which he claims to have the certificate set aside, or must satisfy the Civil Court that he had good reason for not doing so.

Revenue-sale laws.

The enactments relating to the avoidance of tenancies and incumbrances by a sale for arrears of Government revenue are Acts XI of 1859 (secs. 37 and 52), VII (B. C.) of 1868 (secs. 11 and 12), and II (B. C.) of 1871.

The partition of revenue-paying estates is now made under Act VIII (B. C.) of 1876, and the law relating to *patní* tenures is to be found in Reg. VIII of 1819.

Construction of Act.

Act to be read subject to Acts hereafter passed by Lieutenant-Governor of Bengal in Council.

196. This Act shall be read, subject to every Act passed after its commencement by the Lieutenant-Governor of Bengal in Council.

This is new.

SCHEDULE I.

(See section 2.)

REPEAL OF ENACTMENTS.

Regulations of the Bengal Code.

Number and year.	Subject of Regulation.	Extent of repeal.
VIII of 1793 ...	A Regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the Public Revenue payable from the lands of the zamíndárs, independent taluqdárs and other actual proprietors of land in Bengal, Behar, and Orissa, passed for those Provinces respectively on the 18th September, 1789, the 25th November, 1789, and the 10th February, 1790, and subsequent dates.	Sections 51, 52, 53, 54, 55, 64 and 65.
XII of 1805 ...	A Regulation for the settlement and collection of the Public Revenue in the zila of Cuttack, including the parganás of Pattáspur, Kummadichour, and Bagrae, at present included in the zila of Midnapur.	Section 7.
V of 1812 ...	A Regulation for amending some of the rules at present in force for the collection of the Land-revenue.	Sections 2, 3, 4. 26 and 27.
XVIII of 1812 ..	A Regulation for explaining Section 2, Regulation V, 1812, and rescinding Sections 3 and 4, Regulation XLIV, 1793, and Sections 3 and 4, Regulation L, 1795, and enacting other rules in lieu thereof.	The preamble and sections 2 and 3.
XI of 1825 ...	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In clause 1 of section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the clause.

Acts of the Bengal Council.

Number and year.	Subject of Act.	Extent of repeal.
VI of 1862 ...	An Act to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
IV of 1867 ...	An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
VIII of 1869 ...	An Act to amend the Procedure in suits between Landlords and Tenants.	The whole Act.
VIII of 1879 ..	An Act to define and limit the powers of Settlement-officers.	The whole Act.

Act of the Governor-General in Council.

Number and year.	Subject of Act.	Extent of repeal.
X of 1859 ...	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.

FORM OF RECEIPT.

SCHEDULE II.

FORMS OF RECEIPT AND ACCOUNT.

(See sections 56 and 57.)

FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (LANDLORD'S PORTION).

—:o:—

1. Serial number of Receipt
2. Estate ; Village ; Thánâ
3. Tenant's name , Son of
4. Particulars of the holding—

   Nukdi, Bighás ; rent Rs.

   Baouli, Bighás ; Maunds ; or Rs.

   Julkur, Rs.
   Bunkur, Rs.
   Phulkur, Rs.

   Government Cesses { Road Cess, Rs.
   Public Works Cess, Rs.

5. Signature of the Landlord or his Authorized Agent

FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (TENANT'S PORTION).

—:o:—

1. Serial number of Receipt
2. Estate ; Village ; Thánâ
3. Tenant's name , Son of
4. Particulars of the holding—

   Nukdi, Bighás ; rent Rs.

   Baouli, Bighás ; Maunds ; or Rs.

   Julkur, Rs.
   Bunkur, Rs.
   Phulkur, Rs.

   Government Cesses { Road Cess, Rs.
   Public Works Cess, Rs.

5. Signature of the Landlord or his Authorized Agent

Section 55 of the Bengal Tenancy Act, 1885, provides as follows :—

(1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

DETAILS OF PAYMENTS* (LANDLORD'S PORTION).

Date of payment, and name of person through whom paid.	Nukdi.		Baouli.		Julkur, &c.		Cesses.	
	Current on account of kist.	Arrear on account of year, kist.	Current on account of crop.	Arrear on account of year, crop.	Current on account of kist.	Arrear on account of year, kist.	Current on account of kist.	Arrear on account of year, kist.

DETAILS OF PAYMENTS (TENANT'S PORTION).

Date of payment, and name of person through whom paid.	Nukdi.		Baouli.		Julkur, &c.		Cesses		Signature of the landlord or his authorized agent.
	Current on account of kist.	Arrear on account of year, kist.	Current on account of crop.	Arrear on account of year, crop.	Current on account of kist.	Arrear on account of year, kist.	Current on account of kist.	Arrear on account of year, kist.	

* The question has been asked—How is interest to be shown in this form of receipt? Each column may, where interest is paid, be subdivided into three columns, thus:—

Principal.	Interest.	Total.

There is nothing in the Act to prevent this.

FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

	Bighás	Rate	Rs.	A.	P.
Nukdi					
Government Cesses					

	Bighás	Maunds	Rs.	A.	P.
Baouli					
Julkur ...	...	...	...		
Bunkur ...	...	...	...		
Phulkur ...	...	...	...		

	Maunds	Rs.	A.	P.
4. Demand of the year	...	...		
5. Balance of former years (Bakaya)	...			
		Rs.	A.	P.
6. Total demand (current and arrear)...		...		
7. Paid cash on account of { Current demand	...			
Arrear demand	...			
	Maunds			
8. Paid in kind				
		Rs.	A.	P.

9. Balance outstanding at end of year
10. Signature of the Landlord or his authorized Agent

FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

	Bighás	Rate	Rs.	A.	P.
Nukdi					
Government Cesses					

	Bighás	Maunds	Rs.	A.	P.
Baouli					
Julkur ...	...	...	...		
Bunkur ...	...	...	...		
Phulkur ...	...	...	...		

	Maunds	Rs.	A.	P.
4. Demand of the year	...	...		
5. Balance of former years (Bakaya)	...	...		
		Rs.	A.	P.
6. Total demand (current and arrear)	...	...		
7. Paid cash on account of { Current demand	...	...		
Arrear demand	...	...		
	Maunds			
8. Paid in kind				
		Rs.	A.	P.

9. Balance outstanding at end of year
10. Signature of the Landlord or his authorized Agent

SCHEDULE III.

LIMITATION.—(*See section* 184.)

PART I.—*Suits.*

Description of Suit.	Period of Limitation.	Time from which period begins to run.
1. To eject any tenure-holder or raiyat on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach.	One year ...	The date of the breach.
2. For the recovery of an arrear of rent—		
(*a*) when the arrear fell due before a deposit was made under section 61 on account of the rent of the same holding.	Six months ...	The date of the service of notice of the deposit.
(*b*) in other cases ...	Three years ...	The last day of the Bengalí year in which the arrear fell due, where that year prevails, and the last day of the month of Jeyt of the Amli or Fasli year in which the arrear fell due, where either of those years prevails.
3. To recover possession of land claimed by the plaintiff as an occupancy-raiyat.	Two years ...	The date of dispossession.

Period within which arrears may be recovered.

Art. 2. In the case of *Kashi Kant Bhattacharjee* v. *Rohini Kant Bhattacharjee* (I. L. R., 6 Calc., 325) it was ruled, that the last day on which a suit for recovery of arrears of rent can be instituted under sec. 29, Act VIII (B. C.) of 1869, is the last day of the third year from the close of the year in which the rent became payable.

Article 3 does not apply in cases in which plaintiff sues on the strength of his title.

Article 3, sec. 27, Act VIII (B. C.) of 1869, applies only to such suits for possession as the Court is asked to decide irrespectively of any title, but simply on the ground that the plaintiffs have been ousted otherwise than by legal means (*Forbes* v. *Sree Lal Jha*. I. L. R., 8 Calc., 365) So, when a raiyat, having a mere right of occupancy in certain land, has been wrongfully dispossessed by the zemindar, his suit to recover possession must be brought within the period of limitation specified in sec. 27, Beng. Act VIII of 1869 (*Brindabun Chunder Sircar* v. *Dhunnunjoy Nushkur* (I. L. R , 5 Calc., 246). The period of limitation specified in sec. 27, Act VIII (B. C.) of 1869, does not apply to a case in which a plaintiff relies on his title, and seeks to recover possession on the strength of that title (*Joyunti Dasi* v. *Mahomed Ally Khan*, I. L. R., 9 Calc., 423); but

when a suit by a tenant is both in form and substance one to recover possession on the ground of illegal dispossession by the landlord, and no question of the plaintiff's title is raised, the insertion in the plaint of a claim for declaration of the plaintiff's title is not sufficient to prevent the application of the limitation prescribed by sec. 27 of Beng. Act VIII of 1869 (*Imam Buksh Mondul* v *Momin Mondul*, I. L. R., 9 Calc., 280). The non-payment of rent for a term of twelve years and more does not relieve an occupancy-raiyat from the status of a tenant, so as to give him a title to the land. Rent falls due at certain periods, and the failure to pay it becomes a recurring cause of action, and therefore, when the right to take rent is admitted by the raiyat, no question of limitation can arise (*Poresh Narain Roy* v. *Kashi Chunder Talukdar*, I. L. R., 4 Calc., 661).

Non-payment of rent does not relieve tenant of occupancy status.

PART II.—*Appeals.*

Description of Appeal.	Period of Limitation.	Time from which period begins to run.
4. From any decree or order under this Act, to the Court of a District Judge or Special Judge.	Thirty days ...	The date of the decree or order appealed against.
5. From any order of a Collector under this Act to the Commissioner.	Thirty days ..	The date of the order appealed against.

PART III.—*Applications.*

Description of Application.	Period of Limitation.	Time from which period begins to run.
6. For the execution of a decree or order made under this Act, or any Act repealed by this Act, and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree; except where the judgment-debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1877.	Three years ...	(1) The date of the decree or order; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been a review of judgment, the date of the decision passed on the review.

Limitation runs from date of decree.

Art. 6. Under sec. 58, Act VIII (B. C.) of 1869, limitation runs from the date on which the decree was passed, and not from the date on which the sum adjudged was made payable (*Mamtazul Huq* v. *Nisbai Sing*, I. L. R., 9 Calc., 711 ; 12 C. L. R., 319).

Proper application for execution must be made within three years of date of judgment.

The words "no process of execution of any description whatsoever shall be issued on a judgment in any suit ..... after the lapse of three years," in sec. 58 of Beng. Act VIII of 1869, mean, that execution shall not issue unless a proper application for execution is made within three years from the date of judgment (*Golokemoney Dabia* v. *Mohesh Chunder Mora*, I. L. R., 3 Calc., 547)

Rent-decree for less than Rs 500 cannot be executed after three years from date of decree.

When a rent-decree has been passed for a sum less than Rs 500, sec. 58 of Act VIII (B. C.) of 1869 is a bar to the issue of any process for execution after three years from the date of the decree, notwithstanding that a prior step in execution shall have been taken within three years (*Bholanath Roy* v. *Hori Moni Dabee*, 12 C. L. R., 58).

Inclusive of costs.

The words "inclusive of costs" in this article set aside the ruling of the High Court in the case of *Kadumbini Dabya* v. *Koylash Chunder Pal Chowdhry* (I. L. R., 6 Calc., 554), in which it was laid down that the costs of appeals in execution-proceedings should not be added to the amount of the decree in calculating whether it amounted to more than Rs. 500.

APPENDICES.

BENGAL S... LIBRARY

Appendix I.

RULES UNDER THE BENGAL TENANCY ACT

MADE BY THE

LOCAL GOVERNMENT.

NOTIFICATION.

BENGAL TENANCY ACT.

The 21*st December*, 1885.—Under sub-section 5, section 190 of the Bengal Tenancy Act (VIII of 1885), the following Rules are published for general information.

A. P. MACDONNELL,
Secy. to the Govt. of Bengal.

Rules under the Bengal Tenancy Act (Act No. VIII of 1885).

CHAPTER I.—GENERAL.

Section 189.

1. In carrying out the following rules, Revenue-officers shall have regard to the instructions of the Board of Revenue for the guidance of Revenue-officers, so far as such instructions are consistent with the rules herein prescribed under Act VIII, 1885.

2. Except where otherwise provided for by law or by these rules, all proceedings and orders of Revenue-officers, passed in the discharge of any duty imposed upon them by or under this Act, shall be subject to the supervision and control of the Board of Revenue; and the orders of each Revenue-officer under this Act shall be subject to the supervision and control of the Revenue-officers to whom he may be declared by the Board of Revenue to be, for the purposes of the Act, subordinate;

* These references are in all cases to the sections of the Bengal Tenancy Act.

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The Collector and the Commissioner, in whose jurisdiction operations under these rules are in progress, shall be entitled to inform themselves of the nature and progress of such operations.

3. Where no other mode of service of notice is prescribed by the Tenancy Act or by these rules, service shall be effected in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, if the notice is addressed to only one person; and if it is addressed to a number of persons occupying or owning land in the same village, the notice shall be served by proclamation and beat of drum, and by posting it in the presence of not less than two persons in some conspicuous place in the village, and also by fixing it up in the village office, if any, where the rent is usually paid.

Rule (2).—"*Except where otherwise provided for by law or by these rules.*" These words refer *inter alia* to decisions in proceedings of the nature referred to in Rules 27 to 32, Chapter VI, *post*, which are appealable to the Special Judge. Executive orders of Revenue officers are, under this rule, subject to the supervision and control of the Board of Revenue, where not otherwise specially provided for by law or by these rules.

Rule (3).—This rule prescribes the mode of service of all notices, for which special provision is not made in Chapter V, *post*.

CHAPTER II.—STAPLE FOOD-CROPS AND PRICE-LISTS.

1. *Section* 39 (1).—The local areas under this section shall be those entered in Schedule II annexed to these rules, and the mart specified in the same schedule for each local area, shall be that at which prices shall be recorded.

2. *Section* 39 (7).—The Collector, after such enquiry into the relative extent to which particular food-crops are grown in his district, as he may think necessary, shall cause a notice to be affixed in his office and in the sub-divisional office, specifying the food-crop or food-crops which in his opinion is or are most extensively grown in each local area. The notice shall distinguish, as far as may be practicable, between crops grown on high lands and crops grown on low lands; and shall fix a day, not being later than 15 days after the publication of such notice, on which objections will be taken into consideration. On the day so fixed, the Collector shall take into his consideration the objections, if any, to the enumeration of staple food-crops proposed in the notice, and shall report his opinion thereon to the Board of Revenue. The Board of Revenue shall submit the Collector's opinion to the

Local Government, with such remarks as may seem to them necessary. The Local Government, after considering the reports of the Collector and the Board of Revenue, shall determine and notify in the *Calcutta Gazette* what shall be deemed staple food-crops in each local area.

3. Price-lists of staple food-crops shall be prepared on two market days in the month at intervals of not less than ten days. Such market days shall be selected by the Collector, subject to the control of the Board of Revenue.

4. The price recorded for each staple food-crop shall be the prevailing retail price at which that crop was actually sold in the mart to which the price-list refers on the days prescribed in the last preceding rule.

5. Price-lists shall ordinarily be prepared by a gazetted officer, not below the rank of a Sub-Deputy Collector. But in special cases where a Sub-Deputy Collector is not available, the Collector, with the sanction of the Commissioner, may authorize a canoongoe to prepare the lists.

6. Every officer charged with the preparation of price-lists shall keep a record showing, as far as practicable,—

(*a*)—the date of his visit to the mart, at which prices are to be recorded;

(*b*)—the names of vendors and purchasers, the quantities sold, and the price thereof, for any sales effected in his presence.

7. When price-lists are prepared at the sudder sub-division by an officer other than a Covenanted Deputy Collector, or at other sub-divisions by an officer subordinate to the Sub-Divisional Officer, they shall be submitted to the Covenanted Deputy Collector, or a Deputy Collector specially nominated by the Collector for the purpose, or Sub-Divisional Officer, as the case may be. Such officer shall scrutinize the lists; he may call for explanations and cause manifest errors to be corrected; and, having satisfied himself of the accuracy of the lists, he shall countersign them.

8. The price-lists shall be published for not less than one week at the marts to which they respectively refer, at the Collector's or Sub-divisional office, and at every police station and munsifi in the local area.

9. After the expiry of the term of publication of the price-lists in the mart to which they refer, as mentioned in the last preceding rule, the lists shall be submitted to the Board with any objections made to

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Rule (2).—"*The notice shall distinguish, as far as may be practicable, between crops grown on high lands and crops grown on low lands.*"—This provision is intended to obviate the difficulty in effecting enhancements, which might arise if two or more crops were declared to be staple food-crops for the same kind of land in the same local area, and their prices were to rise or fall in different ratios, or the price of one were to rise, while that of the other fell.

CHAPTER III.—LANDLORDS' IMPROVEMENTS.

1. *Section* 80.—An application for the registration of a landlord's improvement may be presented to the Collector of the district or to the officer in charge of the sub-division in which the land benefited by the improvement is situated, or to any Assistant or Deputy Collector who may be specially appointed by the Government to receive such application. It shall, as far as practicable, be in the form specified in Schedule I appended to these rules.

2. The officer receiving the application may, if he thinks fit, require the applicant to present as many copies of the application as there are tenants mentioned in column 7 of the application, or as there are villages mentioned in column 2, and he may, as the case may be, either forward by registered letter copies to the tenants whose names are specified, or may give notice to the tenants by causing a copy to be fixed up in the presence of not less than two persons in some conspicuous place in every such village. In either case he shall fix a date for hearing objections to the application, and shall cause that date to be notified to the parties concerned, either by entering it in the copies forwarded by registered letter or by proclaiming it by beat of drum, and by posting, in the presence of not less than two persons, a notice declaring it in each village. The expenses of such service shall be borne by the applicant for registration.

3. The officer may make over the application to any of his subordinates, not being below the rank of a canoongoe, for local enquiry and report, and shall, in that case, fix a date for hearing the report, and shall cause such date to be notified to the parties concerned in the manner set forth in Rule 2. The enquiry shall be limited to the ascertainment of the fact whether the alleged improvement is of such a nature as to come within the meaning of section 76 (2), Bengal Tenancy Act, or not.

On the date so fixed, or on any date to which the proceedings may be adjourned, the officer shall hear summarily such of the parties and their witnesses as may attend, and shall consider any report submitted to him under Rule 3. He shall then decide whether the work is an improvement as defined in section 76 (2), Bengal Tenancy Act, and whether the landlord is entitled to register it, and shall accordingly order it to be registered or refuse registration.

5. Nothing hereinbefore contained shall preclude the officer receiving the application from holding a local enquiry in person, and from ordering the improvement to be registered, or refusing registration in accordance with the result of the enquiry so held.

6. If an order refusing to register an improvement is passed by an officer lower in rank than the Collector of the district, such order shall not take effect until confirmed by the Collector of the district.

7. *Section* 81 (1).—Evidence relating to any improvement under this sub-section shall be recorded by the Revenue-officer specified in Rule 1 of this Chapter, who shall exercise the powers of a Civil Court in the trial of suits, and shall be guided by the provisions of sections 182 and 184 of the Civil Procedure Code.

CHAPTER IV.—RECORD OF PROPRIETORS' PRIVATE LANDS.

1. *Section* 118.—Applications under this section may be made to the Collector of the district, or to the officer in charge of the subdivision in which the land in question is situated, or to any Assistant or Deputy Collector specially empowered by Government to receive such applications. If the application is made to the Collector of the district, he may transfer it for disposal to any officer empowered by Government to receive it.

2. The application shall be signed by the party making it, and shall contain the following particulars so far as the applicant is able to furnish them :—

(*a*) The name, towji number, and Government revenue of the estate.

(*b*) The names of the registered proprietors and the share held by each.

(*c*) The specification of each plot of land referred to in the application, showing the village in which it is situated and the area and boundaries of each plot, if known.

(*d*) The names of the tenants (if any) in occupation of each such plot.

(*e*) Grounds of the application.

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3. On receipt of the application, the officer shall make such inquiry as he may think fit by examining the applicant or his agent, and may call for further particulars before ordering further proceedings.

4. If the area of the lands has not been already ascertained by measurement made by competent agency under the authority of Government, or if for sufficient reason a further measurement is considered desirable, the officer shall order the lands to be measured, and shall estimate the cost of measurement in accordance with the rules for the time being in force for the measurement of lands in partition-cases, and shall require the applicant to deposit the amount either at once or in such instalments as he may deem fit.

CHAPTER V.—SERVICE OF NOTICES.

1. *Sections* 12, 13 *and* 15.—Notices under these sections shall contain, so far as may be possible, the particulars given in the forms specified in Schedule I, and shall be served on the landlord or his agent, or, where two or more persons are joint landlords, on their common agent referred to in section 188, or on their common manager appointed under section 95, as the case may be, in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure. Where there is more than one landlord, and no common agent or common manager has been appointed, the notice shall be served by being posted on the landlord's village office, if any; and if there be no village office, by fixing it up in the presence of not less than two persons on some conspicuous place on the tenure, and a copy shall also be forwarded by post in a letter registered under Part III of the Indian Post Office Act to the person or persons to whom, immediately preceding the transfer, the rent had ordinarily been paid. When notice is served personally, the landlord's fee shall be tendered with the notice. If in cases of personal service a receipt cannot be obtained for the fee from the landlord or his agent, and in all cases when the notice is not served personally, the fee shall be held in deposit by the Collector until applied for by the person or persons authorised to receive it.

2. *Section* 45.—Notice to a raiyat to quit under this section shall be served through the Court having jurisdiction to entertain a suit for ejectment from the holding in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure; and shall be subject to the same process-fee.

3. *Section* 46 (2).—The agreement under this section shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent

of the holding, and shall be served on the raiyat in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the fee prescribed by the High Court.

4. *Section* 46 (4).—The notice under this section shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served on the landlord in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the process-fee prescribed by the High Court.

5. *Section* 63 (2).—In cases (*a*), (*b*) and (*d*) of section 61 herein referred to, the notice of the receipt of the deposit shall be served by forwarding the notice by post in a letter registered under Part III of the Indian Post Office Act, 1866, or, where the Court may deem it necessary, in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure.

6. *Section* 72 (2).—The general notice referred to in this sub-section may be published by the transferee by fixing up a written notice to the tenants in the village office, or in the presence of not less than two persons on some conspicuous place on the lands, and by proclaiming to the tenants by beat of drum in every village to which the transfer extends, that the interest of the former landlord has passed to the transferee. The transferee may, if he thinks fit, apply for service of the notice to the Civil Court having jurisdiction to entertain a suit for arrears of rent of the holding, and the Court shall thereupon serve the notice as hereinbefore prescribed on payment of the process-fee prescribed by the High Court.

7. *Section* 73.—Notice under this section shall be in writing, and shall be delivered to the landlord or his agent, or, where two or more persons are joint landlords, to their common agent referred to in section 188, or to their common manager appointed under section 95, as the case may be, at the landlord's village office, or at such other convenient place as may be appointed by the landlord for the payment of rent under sub-section (2) of section 54.

8. The raiyat may, if he thinks fit, cause the notice to be served through the Civil Court having jurisdiction to entertain a suit for arrears of rent of the holding in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the process-fee prescribed by the High Court.

9. *Section* 86 (2) *and* (4).—If the raiyat elect to proceed under the second sub-section of this section, he may personally serve a written notice of his intention to surrender on his landlord; but if he elect to proceed

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under the 4th sub-section of the section, the notice of the raiyat's intention to surrender shall be served on the landlord in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the process-fee prescribed by the High Court.

10. *Section* 87.—A notice of the tenant's abandonment of his holding under sub-section (2) of this section shall be in the form specified in Schedule I, shall be published by beat of drum upon the holding alleged to be abandoned, and a copy thereof shall be affixed, in the presence of not less than two witnesses, to some dwelling-house or tree, or other conspicuous object upon the holding. The fee payable by the landlord shall be Re. 1.

11. *Section* 155.—Notice to the tenant under this section shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the fee prescribed by the High Court.

CHAPTER VI.—RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

Powers of Revenue-officers. Section 189.

1. Revenue-officers appointed to be Settlement-officers or Assistant Settlement-officers for the purpose of making surveys, records-of-rights, settlement of rents, determination of proprietors' private lands, and such like proceedings, or any one or more of them, under the Tenancy Act, are hereby vested with all powers exercised by a Civil Court in the trial of suits, and with the powers mentioned in section 189 (1) (*b*) and (*c*) of the Tenancy Act, VIII of 1885.

2. Deputy Superintendents of Survey and Assistant Superintendents of Survey employed in operations under these rules are hereby declared to be Revenue-officers for the purposes of performing any duty imposed upon them by these rules, or by instructions consistent with these rules, issued by the Board of Revenue. They are hereby vested with the powers specified in section 189 (1) (*b*), provided that an Assistant Superintendent shall not exercise the powers vested in a Superintendent under the Bengal Survey Act.

Rule (1).—Among the powers conferred on officers appointed to be Settlement and Assistant Settlement-officers by this rule, is that of summoning witnesses. This power may be exercised in any proceeding and in the discharge of any duty imposed by the Act or these rules, and is not confined to proceedings in which the Revenue-officer is acting as a Revenue or Civil Court.

Rule (2).—Under this rule Assistant Superintendents of the Survey Department can exercise such of the powers of a Superintendent of Survey under

the Bengal Tenancy Act as may be delegated to them by the Collector, Settlement-officer, or Superintendent of Survey, as the case may be.

Procedure for Cadastral Survey and Record-of-Rights.

3. The following processes will ordinarily be comprised in a cadastral survey, record-of-rights, and settlement of rents :—

I.—Demarcation of boundaries.

II.—Measurement.

III.—Testing of measurement.

IV.—Record of rents and rights.

V.—Determination of fair rents on application, and, in certain cases, without application of parties.

According to the Dictionaire des Dixtionnaires, the word "cadastral" is derived from the mediæval Latin word *capitastrum*, "a public register containing the quantity and value of landed property, names of owners, &c., which served for the assessment of the tax on property." According to others, the word is derived from the French verb "*cadrer*," to square or correspond with, all objects on a large scale or plan being shown in their true positions and proportion, whereas in a topographical map certain features must be exaggerated for sake of distinctness. (*Ocean Highways, November*, 1872.)

Demarcation of Boundaries before Cadastral Survey.

4. The demarcation of village boundaries shall be carried out in accordance with the definition of a village given in section 3 (10), and the boundary according to possession, where different from that demarcated as above, shall also be shown on the map.

5. Boundary pillars of a permanent nature shall be erected at every point where the boundaries of three or more villages meet, and may be erected wherever the Revenue-officer considers it necessary to define by pillars the boundaries of estates or tenures or of lands, which have been the subject of dispute.

Measurement.

6. A field map of every village shall be prepared. It shall show the boundaries of every field separately assessed to rent, or of such plot of land as the instructions of the Board of Revenue for giving effect to these rules may lay down.

7. A field register or khasrah shall be prepared at the time of survey in the following form,* or such similar form as the Board of Revenue may direct.

8. In preparing the khasrah and khatian, officers shall be guided by such instructions, consistent with these rules, as the Board of Revenue may issue for the purpose for giving effect to these rules.

* See next page.

FORM OF KHASRAH.

1		2	3	4	5	6	7	8	9	10						11		12			13		14	15
FIELD.										CROPPED AREA						DETAILS OF UNCROPPED LAND.		RATE OF RENT OF RAIYAT			RATE OF RENT OF UNDER-RAIYAT			
										Bhadoi.		Rabi		Aghani										
a	b																	a	b	c	a	b		
Number.	Boundaries.	Name of estate or share of estate.	Name of proprietor and landlord, with parentage, caste, and residence.	Name of raiyat, father's name, caste and residence.	Name of under-raiyat, father's name, caste, and residence	Area in square yards according to which measurement has been made.	Area in village bigah of biswi	Method of irrigation.	Non-irrigated	Crop.	Area.	Crop	Area.	Crop.	Area	Doubli area	Class of lands	According to zemindar	According to raiyat	According to patwaree.	According to raiyat.	According to under-raiyat	Class of soils	REMARKS

The Board of Revenue has given the following instructions for preparing the khasrah in the survey of Mozufferpore:

Scale of maps.

The external boundaries of villages will be measured with the Gunter's chain and plotted on the scale of 16 or 24 or 32 inches to the mile in the skeleton sheets, according to the discretion of the Deputy Superintendent of the Survey Department.

The measurement of fields will be made with a chain, divided and subdivided according to the bigha in most general use in the pergunnah—

Language in which to be written.

1. The amins will write up, or cause to be written, one copy of the khasrah and one copy of the khatians in Hindee.

Unit of measurement.

2. The unit of measurement will be a field (locally known as a kitta), that is to say, the plot separately assessed to rent under existing arrangements and in occupancy of the same raiyat. It is only the patwari or the raiyats and zemindars or their agents themselves who can point out on the spot what area constitutes a kitta or field, and the boundaries thereof; and the amin must survey and map separately every plot which is pointed out to him as a separate kitta or field, however small it may be, and though two such kittas are contiguous and belong to the same occupant.

3. *Column* [1 (*b*)] *of the khasrah.* In this column will be entered th name of the occupant of one field on each of the four sides of the field surveyed. It will not be enough to enter "east of the preceding field" (*number-wala se purab*). The boundaries should be given as follows:—

North	...	...	A B's field.
South	...	...	C D's „
East	...	...	E F's „
West	...	...	This raiyat's field, number so and so.

4. *Khasrah column 2. Name of estate or share of estate.*—If the village contain more than one mehal or estate, the name of the mehal or estate to which the field belongs will be entered in this column.

5. If the mehal or estate has been divided by regular *batwarra* or by private partition, the name of the *patti* to which each field belongs should be also entered in this column.

6. When a dispute arises as to the patti or mehal to which a field belongs, the amin will note the particulars of the dispute in his dispute list, and proceed with the measurement, leaving the column for the disputed entry blank.

Name of proprietor to be entered.

Mortgagees and tenure-holders.

7. *Khasrah column 3. Name of the proprietor and landlord, with parentage and caste.*—In this column will appear name of proprietor, father's name, caste, and residence, and if the proprietor has mortgaged his share or let it in thika, the name of the mortgagee or thikadar will also appear in it.

Names of what proprietors to be entered, if there be not space for all.

8. In case proprietors, mortgagees and tenure-holders are so numerous that their names cannot be conveniently entered in column 3, only the names of the person to whom rent is immediately payable and of the principal proprietor need be entered, a reference being made to the entries in the khewat, which show the names of all the other landlords.

Lakhirajdars.

9. The names of owners of land held revenue-free from Government should likewise be shown in column 3, but the names of holders of lands

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claimed to be held rent-free from proprietors should not be shown in it. The latter will be entered in column 4, and their rent will be entered as zero. The rents paid by the tenants of the latter lakhirajdars should be shown in column 13.

Disputes as to occupation of land.

10. *Column 4. Name of raiyat.*—If the patwari, landlord, and raiyat all agree as to the name of the occupant, the name as given by them will be entered. If there be a dispute as to who is the occupant, the amin will leave this column blank, note the allegations made by the (*a*) raiyat, (*b*) patwari, and (*c*) zemindar in the list of disputes, and proceed with the measurement. He will send a list of such disputes to his departmental superior, who will refer them to the Settlement-officer, so that the latter may, if possible, proceed to settle the dispute while the survey is going on.

Land cultivated by the proprietor how to be entered.

11. Land cultivated by the proprietor or thikadar is to be entered in column 4, thus: "Cultivated by the proprietor or thikadar," as the case may be. The length of time the land is alleged to have been so cultivated may be given in the column of remarks as stated by (*a*) the landlord, (*b*) by the patwari, (*c*) by the jeth raiyats. The Settlement-officer will subsequently determine, in accordance with rules laid down in the chapter on Record-of-Rights, as to each such plot, whether it is really *nij-jote*, *sir* or *zerat*, within the meaning of the Tenancy Act, or merely land cultivated by the proprietor, but not *sir*. Length of cultivation or possession need not be recorded by the survey amins in any case other than that of land cultivated by the proprietor himself; and the Settlement-officer may, if he find that the record of length of possession by amins leads to disputes or retards the work, direct that the amin do not record length of possession even in such cases.

12. *Column 5. Names of under-raiyats.*—In this column will be entered the names of under-tenants locally called "Kartouli or Kaloiti Assamees." Where lands have been sub-let under kartouli pottahs to indigo factories, the name of the lessee should be entered in this column.

13. *Column 6.* Area in pergunnah bighas of 4,225 square yards is to be given, and should be worked out and explained to the parties daily as the measurement proceeds.

Length of local laggi how to be ascertained.

14. *Column 7. Area in local bighas.*—The local bigha is stated in the survey records of 1847 to be that of 6½ hâths to the laggi, or 4,225 square yards. It will, however, be found that the bigha actually in use is in many villages somewhat different. The amin will record in each mehal the length of the village laggi according to which rents are now assessed as stated by (*a*) the landlord, (*b*) the tenant, (*c*) the patwari. In case of dispute he will make an entry in his dispute list, and the matter will be referred to the Settlement-officer. The Settlement-officer, if he has not already settled the question at the time of demarcation, will, after local enquiry, ascertain what the area of the village bigha is, and notify his decision to the Survey-officers, who can fill in column 8, by converting the area in bighas of 6½ hâths to the area in village bighas. In many cases the village bigha will be found to be the bigha of 6½ hâths to the laggi. It is of great importance, with a view to the determination of what are fair rents, that the exact length of the village laggi, on which rents are now actually paid, should be accurately ascertained.

It is not enough to say the laggi is of so many "hâths:" the length of the so-called hâth must also be ascertained. In some cases the "hâth" will be found to be a cubit of eighteen inches: in others it will be found that the "hâth" was determined by the length of a particular individual's forearm. Disregard of facts of this kind may lead to serious injustice in determining amounts of rentals, should they be calculated at existing rates on areas resulting from scientific survey. Should the conversion of areas of *fields* from the pergunnah to village bighas cause much extra labour, it may be found sufficient to convert the total areas of each class of land by soil, such as of *dhanhar* and *bhit* in the holding, into village bighas.

Cols. 8 to 11. Method of irrigation, cropped areas, details of uncropped land.

15. The Survey-officers will give detailed directions for filling up the columns relating to irrigation and for the compilation of statistics of cropped areas. The instructions given should, however, be submitted to, and approved by, the Settlement-officer.

The following remarks should be borne in mind in giving instructions in these matters.

Names of crops.

All cultivated fields in the district are either single-cropped or double-cropped. There are three descriptions of crops locally known as—

(1) *Bhadoi*, sown in Jeth and Asarh.

(2) *Aghani*, sown in Bhadro and Assin, generally dhan crop.

(3) *Rabi*, sown in Aghan and Pous.

Single-cropped fields are those which are found to grow in the year of survey only a *bhadoi* crop, or only an *aghani* crop (*i e.*, dhan), or only a *rabi* crop. Double-cropped are those which grew in the year of survey—

(*a*) *Bhadoi* and *Rabi*.—Bhit land will be found generally to be of this kind; or

(*b*) *Aghani* and *Rabi*.—Some dhan fields will be found to be of this kind, growing dhan for *aghani*, and *tisi* or *khesari* for *rabi*.

It must be remembered that the single-cropped lands need not necessarily grow only one product. There may be two or more crops growing simultaneously for *bhadoi*; for example, there may be growing at the same time in the same land *makai* and *urid*. If this land does not grow a *rabi* crop in the same year, it will still be ekfasla.

The names of all the crops grown in the year of survey should be entered. There may be *murwa* for the *bhadoi* harvest, and *jao*, *tisi* and *sarso* for the *rabi* harvest. It will not be enough to enter merely *murwa* and *jao*. The entry must be made in this way:—

Bhadoi	...	...	...	...	...	Murwa.
Rabi	...	...	...	...	...	Jao, tisi, sarso.

Rates of rent how to be entered.

16. *Column* 12 *of the khasrah. Rate of rent of raiyat.*—(*a*) In this column the amin will enter the rate of rent of nagdi lands as stated (*a*) by the landlord, (*b*) by the raiyat, (*c*) by the patwari. The amin will not make any attempt to determine what the rate actually is. He will merely record the rates as alleged by the three parties named above. It is not ordinarily necessary for the purposes of the Tenancy Act to determine the rate of rent except

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where questions arise regarding fixed rates. Such questions, when they have to be determined at all, will be determined by the Settlement-officer. If any of the three parties named does not attend at the time of measurement, or attends and says he is ignorant of the rate, the column regarding his statement may be left blank, and the reason may be noted in the column of remarks.

Bhaoli how entered.

(*a.*) If the land is held *bhaoli*, the word *bhaoli* will be written in this column. If alleged to be held *munkhap*, that is to say, on a lump sum rental of so much grain for an entire holding, and not so much per bigha, then the word *munkhap* will be entered with particulars of the amount of rent.

Rent-free land how to be entered.

(*b.*) If the land is claimed to be held rent-free from the zemindar, the rate of rent, as stated by the raiyat, will be entered zero, and a remark added thus—claimed rent-free "*muafi brahmotter*," "*sivatter* or *devotter*," as the case may be. If the landlord denies that the land is held rent-free, the rate, as stated by him, will also be entered.

17. *Column* 13 *of the khasrah. Rate of rent of under-raiyat.*—In this column the amin will enter the rate of rent paid by the under-raiyat as stated (*a*) by the head-raiyat, (*b*) by the under-raiyat. If the land is held under a kartouli pottah, the rate given in the pottah should be entered.

Classification of soils.

18. *Column* 14 *of the khasrah. Class of soil.*—In this column will be entered the class of soil as locally known and recognized by the cultivators of the district; not that to which the amin may have been accustomed in other districts. The local classification of soils is into *dhanhar* and *bhit*. *Dhanhar* is land on which *aman* dhan is grown in the year of survey. *Bhit* or upland is all other cultivated land. *Dhanhar* may be found to be sub-divided at present into first class, second class, and so on. Where this is the case, the amin will enter *dhanhar arul* or *dhanhar duim*, as the case may be.

Bhit in the same way may be found to be locally classified into manured upland near the village site; upland outside the belt of land round the village site; and usar. But the rule to be remembered is, that whatever the local classification known to the patwari, raiyat and landlord may be found to be, it is that classification the particulars of which will be ascertained by the Settlement-officer in communication with the Deputy Superintendent of Survey, which should be followed in the khasrahs and described in the village reports, and not the amin's ideas on the quality of the land.

9. Khatians or abstracts of the particulars of every raiyat's and under-raiyat's holding, and so far as may be of the tenure of every tenure-holder and under-tenure-holder, shall be prepared in the following form,* or such similar form as the Board of Revenue may prescribe.

See next page.

FORM OF KHATIAN.

Khatian of A. B., son of C. D., of mouzah , peryunnah mehal
district , the property of , proprietors

1	2	3	4	5		6		7	8	9	10		11		12			13	14	15	16	17	18	19	20
				KHASRAH NUMBER OF FIELDS AND BOUNDARIES THEREOF.		RENT-PAYING AREA IN					PRESENT RENT														
						Bighas, according to which measurement was made of square yards					According to zemindar.		According to raiyat.		As ascertained by Revenue-officer.										
											(a)	(b)	(a)	(b)	(a)	(b)	(c)								
Name of landlord.	Serial number of raiyat.	Name of raiyat with parent's name, caste, and residence.	Name of under-raiyat with parent's name, caste and residence, and number of under-raiyat's khatian.	Number.	Boundaries.	Cultivated.	Not cultivated.	Total.		Total area in village bighas.	Rent.	Cesses.	Rent.	Cesses.	Rent.	Cesses.	Total.	Fair rent fixed by Revenue-officer (if any).	Class of holding and, in case of non-occupancy-raiyats, length of possession.	Mode in which rent has been fixed, *i. e.*, whether by contract, order of the Court, or otherwise.	If the rent is gradually increasing, the time at which and the steps by which it increases.	The special conditions and incidents of the tenancy (if any).	Enumeration of columns the entries in which have been the subject of dispute.	Enumeration of columns the entries in which have *not* been the subject of dispute.	REMARKS.

NOTE.—The heading of columns 10 and 11 will, for khatians of under-raiyats be changed to "according to raiyat" and "according to under-raiyat," respectively. In the case of tenure-holder's *khatians*, the heading of column 11 will be "according to tenure-holder;" and in the case of under-tenure-holders' *khatians*, the heading of columns 10 and 11 will be altered to "according to tenure-holder" and "according to under-tenure-holder," respectively.

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The Board of Revenue has prescribed the following instructions for the guidance of Survey and Revenue-officers in the preparation of khatians in the survey of Mozufferpore:

The Survey-officers will make out jamabandi slips or khatians, and they will make over the slips for each village to the Settlement-officer as soon after the amin has left the village as is possible. The Survey-officers will fill in only the columns of the khatians which relate to undisputed possession and occupancy, area, crops, irrigation, statistics, rates of rent, field by field. They will not concern themselves with total amounts of rentals of holdings, questions of right, or disputed questions of possession and occupancy, which will be enquired into and determined by the Settlement-officers.

1. *Jamabandi slips to be made for each holding, tenure and under-tenure.*—Separate jamabandi slips will be prepared for each tenure-holder, raiyat, and under-raiyat in each estate; and if a cultivator holds in more than one share of a partitioned estate, a separate slip will be prepared for each share. The slips for tenure and under-tenure-holders will be separated by the Settlement-officer after determination of each tenant's status from raiyats' khatians, and will be separately filed.

2. *Separate slips should be prepared for the following items also:*—

(1) Groves (baghs).
(2) Culturable waste (new) (jadid).
(3) Culturable waste (old) (kadim).
(4) Village sites (basgit).
(5) Barren waste (ghair mumkin).
(6) Tanks and nalás.
(7) Roads belonging to Government.
(8) Other roads.

Alphabetical list of tenants to be procured from the patwari.

3. Before the amin begins cadastral measurements, he should obtain from the patwari or from the landlord's agent a list, alphabetically arranged, of all the raiyats and other occupants of land in the block which he has to measure. This list would be a copy of the patwari's jamabandi, re-arranged alphabetically for each estate or share of an estate.

Khatians to be made out daily as measurement proceeds.

4. As the measurement proceeds the amin will enter opposite each occupant's name the serial numbers of the fields held by him; and in the evening of each day he will fill in columns 1 to 9 of each raiyat's khatian. If, for example, fields Nos. 8, 9, 10 belong to A B, the amin will write down the figures 8, 9, 10 opposite A B's name at the time of measurement, and in the evening he will fill up the other columns of A B's khatian.

Daily attestation.

5. As the khatian is written up day by day, so should all that is entered in it be, as far as practicable, explained day by day to the tenants and landlords concerned; in other words, what is called the "tazdiq" (attestation) should proceed day by day with the measurement; so that, if anybody interested has any objection to any entry made relating to his fields, he should be able to have his objection cleared up before the amin leaves the village.

INSTRUCTIONS FOR FILLING UP THE COLUMNS OF THE KHATIAN.

Column 1. *Name of landlord.*—Should there be a large number of sharers, only the name of the principal landlord to whom rent is immediately payable

need be entered, but a reference should be made to the entry in the khewat containing the names of all other landlords.

Column 3—Will contain the names and descriptions of all the cultivators or sharers in the field, as well as the names of mortgagees in cases where the fields are mortgaged.

Column 4—Will show the names of under-raiyats with a reference to the number of the khatian in which the particulars of the under-raiyats' holding will be found.

Column 6.—The sub-columns of this column will show the area of each class of land by soil in the holding, such as *dhanhar, bhit.*

Column 9.—Area in village bighas will be filled in by the Survey-officers after receipt of notification of the length of the village laggi current in each mehal from the Settlement-officer.

Columns 10, 11, 12.—Amount of present rent according to zemindar, raiyat and patwari will be filled in by the Settlement-officers.

Columns 13, 14, 15, 16.—*Fair rent fixed, if any, class of holding, mode in which rent has been fixed, special incidents of the tenancy.*—These columns will be filled in by the Settlement-officers in accordance with the rules prescribed in the chapter on the " Record of-Rights.'

Record-of-Rights.

10. The record-of-rights shall consist of, and be contained in—

I.—The khewat.

II.—The khatian.

Rights of Proprietors.

11. The khewat shall contain a record of the character and extent of proprietary interests.

12. It shall be prepared in the following manner :—

(*a.*)—An extract from the Collector's Registers A, B, C, D, named under the Land-Registration Act, VII (B.C.) of 1876, containing the names, extent, and character of the interests of proprietors of all revenue-paying and revenue-free lands comprised within the mouzah, shall be supplied by the Collector of the district to the Revenue-officer on the latter's application.

(*b.*)—If the Revenue-officer finds that the proprietary interests existing in the village are in accordance with the entries regarding extent and character of proprietary interests as given in the Collector's registers, he shall have the entries copied into the khewat, which will form the record of proprietary and proprietary-mortgagees' interests for the purposes of the record-of-rights under the Tenancy Act.

The extracts from the Collector's land-revenue registers will also show the names and proprietary interests of managers and mortgagees of all revenue-free property within the village.

(*c.*)—If any person claiming as proprietor or as assignee or mortgagee of an alleged proprietor, deny the accuracy of the khewat as copied from the Collector's registers, the Revenue-officer shall refer him to the Collector of the district, and shall also report the fact to the Collector in order that action may, if necessary, be taken under the Land Registration Act, to compel registration of the proprietor's name.

(*d.*)—In any proceeding under Chapter X, the Revenue-officer may, at his discretion, recognise as proprietor the person in possession of the land, pending the registration of his name and interest under the Land Registration Act.

The record of proprietary rights is not specifically declared in the Act to be a necessary part of the operations under Chapter X, but such a record is indirectly made necessary, because one of the particulars, which the Revenue-officer has, under sec. 102, to ascertain and record, is the name of the landlord. The Collector's registers, prepared in accordance with the Land Registration Act, ought to contain a complete record of proprietary rights. It is known, however, that they do not show the mutations which have taken place since they were first written. If the Revenue-officer were to decline to recognise everybody as proprietor whose name has not been registered, his work might be brought to a standstill. Hence, he is allowed to exercise his discretion in recognising any person as proprietor, though his name may not have been registered in accordance with the requirements of the Land Registration Act. Revenue-officers will probably exercise this discretion where there is practically no doubt that the claimant of proprietary right is really the proprietor, and there is no dispute on the point, even though such claimant may have neglected to register his name. But though the Revenue-officer may thus recognise a non-registered proprietor, for the purpose of making applications for settlement of fair-rents or for other similar purposes, still such recognition will not dispense with the necessity of registration under the Land Registration Act, nor can an authoritative record of proprietary rights be made and published, unless and until such registration has been duly made. It will, of course, be open to a Revenue-officer to decline to recognise as proprietor any person who not only has hitherto failed to register his name, but also at the time of survey and settlement persists in refusing to take the necessary measures for effecting registration.

Lakhirajdar.—Owners of revenue-free property are proprietors under the definition contained in sec. 3 (1 & 2), and are to be treated as such in the preparation of the record-of-rights.

Proprietor's private lands,—Nij-jote, Sir, Zerat or Khamar.

13. Only land which is proprietor's private land, as defined in section 120 of the Tenancy Act, will be entered as such. Land which, though cultivated by the proprietor, is not proprietor's private land within the meaning of the law, will be entered thus—"Cultivated by the proprietor, but not private land." Separate khatians will be prepared for such land and for "proprietor's private land."

It is to be remembered that it is cultivation by the proprietor for twelve years or more which makes any land *sir*, and not cultivation by a thikadar or ijaradar, who is a tenure-holder and not a proprietor.

Rights of Tenure-holders, Raiyats and Under-Raiyats.

14. The record of tenure-holders', raiyats' and under-raiyats' rights shall be prepared in the following manner:—

15. As soon as possible after the completion of the field measurements of each village, the following papers shall be made over to the Revenue-officer:—

(1) The map. | (2) The amin's khasrah. | (3) The khatian.

16. On receipt of these papers, the Revenue-officer shall issue a notification, which may be in the form given in Schedule I attached to these rules, fixing a day, which shall not be less than one month from the date of issue of the notification, on which he will be present at some place to be specified, at or near the village, and after which applications for the settlement of fair rents will not be received. The notification shall further state that on the day so fixed, or on any other day to which the proceedings may be adjourned, the Revenue-officer will proceed to record rents when the circumstances are such as are specified in section 104 (1); or to settle fair and equitable rents on the application of either party; or on the Revenue-officer's own motion when the case falls under section 104 (2); and it shall require all parties interested in the subject-matter of the enquiry to attend at the time and place specified with such evidence as they have to offer in connexion with the proceedings. Such notice shall be forwarded to the Sub-Divisional Officer and the Munsif within whose jurisdiction the land is situated to be affixed in their respective courts, and it shall also be published by proclamation and beat of drum, and fixed up in the presence of not less than two persons in some conspicuous place in the village to which it refers.

17. The Revenue-officer may also, if he deem fit, take such additional measures, under Rule 1 of this Chapter, as may be desirable to procure the attendance, at the place specified in the notice to be

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issued under the last preceding rule, of the under-raiyats, raiyats, landlords, tenure-holders, and proprietors, or their authorised agents.

18. The record-of-rights of tenure-holders and under-tenure-holders shall be, as far as may be practicable, prepared in the same way as the record of raiyats' rights, or in such other manner, not being inconsistent with these rules, as the Board of Revenue may direct. The record-of-rights of under-raiyats shall be, as far as may be practicable, prepared in the same way as the record of raiyats' rights, or in such other manner, not inconsistent with these rules, as the Board of Revenue may direct.

19. The record of raiyats' rights shall be prepared in the following manner.

20. On the date specified in the notice to be issued under Rule 16, or on any other date to which the proceedings may be adjourned, the entries which the amin has recorded in each tenant's khatian at the time of measurement shall be read out in presence of such of the interested parties as are in attendance. If the correctness of the entries recorded by the amin be disputed, the Revenue-officer shall settle the dispute by local enquiry or otherwise: Provided that if the correctness of the measurement is called in question, and a fresh measurement demanded, the Revenue-officer may require the costs of the remeasurement to be deposited. If the remeasurement show the original measurement to have been inaccurate, the amount deposited shall be refunded to the objector.

21. The Revenue-officer shall ascertain what raiyats claim the right to hold at fixed rates, explaining, as far as may be necessary, the provisions of the Act in this respect. If the right claimed is disputed by the landlord, the Revenue-officer shall call on the claimants for proof of such right.

22. The Revenue-officer shall ascertain which of the raiyats are settled raiyats or occupancy-raiyats, as the case may be, and shall record them as such in column 14 of the khatian.

23. The Revenue-officer shall ascertain what raiyats are non-occupancy, and to this end he shall be entitled to call upon the landlord or his agent to produce a statement showing the names of the raiyats alleged by him to be non-occupancy-raiyats. On production of such statement, the Revenue-officer shall explain to the raiyats whose names are entered in the statement, and who have not already been recorded as occupancy or settled raiyats, the nature of the presumption raised by section 20 (7). If, after such explanation, a raiyat admits himself to be a non-occupancy raiyat, he shall be recorded as such. If he does not

admit himself to be a non-occupancy-raiyat, the Revenue-officer shall call on the landlord to prove the allegation made by him in regard to such raiyat.

24. Abwabs shall not be recorded with, nor entered as forming part of, the existing rent. Cesses which are authorised by law shall be recorded in column 12 (*b*).

25. The Revenue-officer, on the day fixed by the notice issued under Rule 16, shall, as far as may be convenient, first proceed to record rents under section 104, clause 1. When neither the landlord nor the tenant has applied to have a fair and equitable rent fixed, and when it does not appear that the tenant is holding land in excess of or less than that for which he is paying rent, the Revenue-officer shall summarily ascertain the tenant's present rent, and record it in column 12 of the *khatian* as the rent payable in respect of the land held by the tenant.

26. When all rents to which section 104, sub-section 1, is applicable have been recorded, as far as may be convenient, the Revenue-officer shall proceed to settle rents under sub-sections 2 and 3 of the same section. In settling rents, the existing rent being presumed, under section 104 (sub-section 3), to be fair till the contrary is proved, if the landlord claims an enhancement, he will have to prove the grounds of, and amount of, enhancement; and if a raiyat claims a reduction, he will similarly have to prove the grounds of reduction: Provided that it shall be in the discretion of the Revenue-officer to admit an application made after the period fixed in Rule 16, if it be established to his satisfaction that the delay in making it was not due to any negligence or carelessness on the part of the applicant, and that, if it be not admitted, serious hardship or injustice would accrue to him. The order passed by the Revenue-officer on all such applications shall be final.

Grounds on which existing rents are to be enhanced or reduced in order to determine "fair rents."

The grounds on which the existing rents of occupancy-raiyats may be enhanced or reduced in order to determine what are fair rents, are given in secs. 30 to 36 and 38 of the Act. The circumstances under which, and the extent to which, the existing rent may be altered on the ground of alteration in the area of the holding are described in sec. 52. Settlement-officers must interpret these sections judicially for themselves. There is one point, however, to which it seemed to the Board desirable to direct attention,—namely, that it is the rent of the holding at the time being payable which must be presumed to be correct, whatever the area, according to survey, may turn out to be, and not the rate of rent. If, for example, the old area was 5 bighas, the rate Rs. 4 per bigha, and total rental Rs 20, and the new area, by cadastral survey, turns out to be 6 bighas, the old rental of Rs. 20, and not Rs. 24, would be presumed to be the fair rent till the contrary is proved.

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Fees to be charged on proceedings for settlement of rents and record-of-rights. In proceedings in which the Settlement-officer is acting as Revenue-officer, and not as a Court, such as when he receives applications for settlement of fair rents, no fees will be charged. In proceedings in which the Settlement-officer is acting judicially as a Revenue or Civil Court, fees shall be charged in accordance with the rules made by the High Court under the Court-fees Act.

27. If within the period fixed and notified under Rule 16 the landlord applies for the settlement of a fair rent, he shall be considered as plaintiff and the tenant as defendant, and the proceeding shall be dealt with as a suit under this Act. If within the same period the tenant applies for the settlement of a fair rent, he shall be considered as plaintiff and the landlord as defendant, and the proceeding shall be dealt with as a suit under this Act.

28. If it appears that a tenant is holding land in excess of or less than that for which he is paying rent, and if within the period fixed and notified under Rule 16 of this Chapter neither landlord nor tenant applies for the settlement of a fair rent, or if an application be not admitted under the proviso to Rule 26, the Revenue-officer shall, in accordance with the notice, proceed to fix a fair and equitable rent for the holding under section 104, sub-sections 2 and 3.

29. When a fair and equitable rent has been fixed under the last two preceding rules, it shall be entered in column 13 of the *khatians* as the rent payable in respect of the holding.

30. Where the estate or tenure belongs to, or is managed by, the Government or the Court of Wards, the procedure laid down in the preceding rules for recording or settling rents shall be followed, the Government or the manager of the estate or tenure respectively, as the case may be, being regarded as the landlord.

31. With the consent of the Revenue-officer, any number of tenants occupying land under the same landlord, in the same village or estate, may make a joint application for the settlement of rents, or may be joined as defendants in the same proceeding on a similar application by the landlord: Provided that if at any time it shall appear to the Revenue-officer that the question between any two of the parties, of whom one is so joined with others, cannot conveniently be so jointly tried, he may order a separate trial to be held of that question, or he may pass such other order, in accordance with the Civil Procedure Code, for the joint or separate disposal of the application, as he may think fit.

32. In proceedings under section 106, when a dispute arises, before the final publication of the record, regarding the correctness of

an entry (not being an entry of rents settled under Chapter X) or as to the propriety of any omission, notice of the objection shall be served on all persons whose interests may, in the opinion of the Revenue-officer, be affected thereby, and they shall be called upon to attend at such time and place as the Revenue-officer may fix for the disposal of the objection. If any person attends and contests the objection, the proceeding shall be dealt with as a suit between the parties under the Tenancy Act, in which the objector shall be plaintiff, and the other parties defendants. If no person attends to contest the objection, the record may be amended accordingly, or the person who made the objection may, if the Revenue-officer thinks fit, be called upon to produce evidence in support of his objection, which may in that case be heard and decided as a suit *ex-parte* under the Tenancy Act.

Publication of the Record-of-Rights.

33. When the record-of-rights has been prepared in the manner described in Rules 20 to 32, the Revenue-officer shall cause a draft of the *khewat* and *khatian*, or, when more convenient, of each separately, to be posted, for the period of one month, at the landlord's village office, if there be one, and if there be none, then in the presence of not less than two persons in some conspicuous place in the village, and shall receive and consider any objections which may be made to any entry therein during this period.

34. When all applications for settling a fair rent have been disposed of, and all disputes of the nature mentioned in Rule 32 have been decided, and all objections of the nature mentioned in Rule 33 have been considered by the Revenue-officer, he shall note in the *khewat* and the appropriate columns of the *khatian* in regard to each entry what entries have been, and what entries have not been, the subject of dispute. He shall then finally frame the record and cause it to be published by having it posted in the village office, at which the rent is usually paid, or in some conspicuous place in the village.

Supply of copies of the Record-of-Rights to parties interested.

35. The Revenue-officer having completed the record, shall cause copies of it to be made, one of which will be made over to the proprietor of the village or, where there are more proprietors than one, to their common agent or common manager, as the case may be, one to the village patwari, if there be a patwari, and one to the Collector or Sub-Divisional Officer.

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A copy of the khatian relating to his tenancy shall be given to every tenant under the signature and seal of the Revenue-officer.

Final Reports.

36. The Local Government may, if it thinks fit, direct that a final report be written in English for each village and each local area under survey. The report for the village will show—

(*a.*)—The number of tenants of each class.

(*b.*)—The area and classification of the village lands according—(*a*) to survey and settlement; (*b*) to landlord's jamabandi, if known.

(*c.*)—The rental according to settlement and according to landlord's jamabandi, with explanation of increase or decrease, amount of Government revenue, and comparison of rent with revenue.

(*d.*)—The rates of rent prevailing, with history of past enhancements.

(*e.*)—Proximity to markets.

(*f.*)—Facilities for irrigation.

(*g.*)—Village customs, including customs as to payment of village officials.

(*h.*)—Arrangements made for maintenance of records.

(*i.*)—Other matters deserving of notice which have been excluded from the record-of-rights.

The report for the whole area under survey will contain the following particulars :—

I.—General description of the tract.

II.—Its fiscal history.

III.—Statistical results.

IV.—Comparison of condition of tract as regards rentals before and after survey.

V.—Financial results, including approximate division of expenses under the heads—

(*a.*)—Survey.

(*b.*)—Record-of-rights.

(*c.*)—Preparation and distribution of records.

These reports shall not form part of the record-of-rights.

The Local Government has directed that final reports on the Mozufferpore survey be written under this rule.

37. *Section* 103.—Applications under this section shall be made to the Collector of the district.

38. The application shall specify—

(*a.*)—The status of the applicant, *viz.*, whether he is a proprietor or a tenure-holder, and the particulars in respect of which the application is made.

(*b.*)—The number of tenants (so far as the applicant is able to state it) occupying the estate or tenure, or part thereof in respect of which the application is made, the total rent payable by them at the time, and the estimated area covered by the application.

39. If the application is made by a proprietor, it shall not be admitted unless the name of the applicant and the extent of his interest are registered under Act VII (B.C.) of 1876.

40. On receipt of the application, the Collector shall forward it to the Commissioner with any remarks which he may think necessary.

41. The Commissioner may call for further information, or may require the application to be amended.

42. If the Commissioner shall have reason to believe that the number of tenants affected by the application does not exceed 1,000, and that the rent payable by them at the time the application is made does not exceed Rs. 25,000, he shall pass an order allowing or rejecting the application; but otherwise he shall forward the application with an expression of his opinion for the orders of the Board of Revenue.

43. A Commissioner rejecting an application shall record his reasons for doing so, and the applicant, if dissatisfied with the order, may appeal within one month to the Board of Revenue.

44. When an application is referred to the Board under Rule 42, or in consequence of an appeal under Rule 43, the Board shall pass such orders as it may think fit for allowing or rejecting the application.

45. The Commissioner or the Board, as the case may be, when allowing an application, shall specify the Revenue-officer or officers by whom the record is to be prepared.

46. As soon as an application is allowed, the Collector shall call upon the applicant to deposit the expenses at the rate of eight annas per acre for the estimated area in respect of which the application has been allowed. If the Collector is unable to estimate the area, he shall calculate the expenses at the rate of Rs. 2 per each tenant. If the amount does

APPDX. I.

not exceed Rs. 500, the applicant must deposit the whole amount in advance. If it exceeds Rs 500, the applicant shall deposit the sum of Rs. 500, and shall give such security as the Collector may require for the balance. The applicant shall, when called upon, from time to time, deposit such further sum as may be necessary for carrying on the operations. On completion of the proceedings, any unexpended balance shall be refunded to the applicant.

47. In conducting the operations, the Revenue-officer shall proceed in accordance with the rules for the guidance of officers acting under orders made under section 101.

CHAPTER VII.—GENERAL SCALE OF FEES.

1. *Section* 189 (1).—*For Service of Notices.*—For the service of every notice under this Act, not being a notice issued by any Revenue or Civil Court (fees for serving which are regulated by the Court-Fees Act), and not being provided for by any other rule made under this Act, a process-fee of 12 annas shall be levied, if the notice be directed to one or more persons residing in the same village.

In this rule a distinction is made between a Revenue-officer and a Revenue Court. The amount of fees on processes issued by Revenue-officers is regulated by this chapter, but the fees on processes issued by Revenue and Civil Courts must be regulated by the High Court Rules made under the Court-Fees Act.

2. Where such notices are directed to several persons resident in different villages, a fee of 12 annas shall be levied for service in each village.

3. In addition to the above fee, the actual charge which must be incurred, if it is necessary to travel by railway or boat, or cross ferries, will be levied from and paid by the person at whose instance the process is issued before issue of the process. If a peon carries more than one process involving charges for railway-fare, boat-hire, &c., the sum leviable will be charged in equal shares upon all the processes so carried. The rates at which such boat-hire is to be charged shall be the same as those fixed for criminal processes under Rule VII of the Rules prescribed by the High Court under clause 2, section 20, Act VII of 1870, and shall be sufficient only to cover, on the whole, the actual cost of hiring boats, or of such boat establishment as it may be necessary to maintain for the purpose of serving processes of these classes.

If a peon is detained at the place of service for more than 24 hours at the request of the person at whose instance the process was issued, or of his agent, such person or agent must then and there pay demurrage at the rate of 5 annas a day. Unless this demurrage is paid, the peon must decline to wait. No demurrage is to be charged if the delay was not due to the person requiring the process or to his agent.

5. *Section* 61 (2).—*For Deposits of Rent.*—For deposits of rent under section 61 (2), 4 annas for every such deposit of Rs. 25 or less, with an additional 4 annas for every Rs. 25 or part of Rs. 25 in excess: Provided that in no case shall the fee exceed the sum of Rs. 5.

6. *Section* 134.—*For Distraint of Crops.*—The following scale of charges is prescribed on account of processes for distraint and sale under the Bengal Tenancy Act:—

(*a.*)—In respect of the warrant of distraint—8 annas.

(*b.*)—In respect of each man necessary to effect the distraint and also to ensure safe custody, where such man is to be left in actual possession—4 annas a day.

(*c.*)—In respect of action taken under section 126 (clause 2) for the reaping, storing, or preservation of the crop distrained—4 annas a day for every person employed, and in addition actual hire of threshing-floor or store-house, if necessary.

In addition to the charges under clauses (*a*), (*b*) and (*c*) above railway-fare, boat-hire, and ferry charges will be levied when necessary as under Rule 3 of this Chapter.

SCHEDULE I.

Notice under section 12, Act VIII of 1885.

To

THE COLLECTOR OF

LET this notice be served on A. B., resident of , as required by section 12, Act VIII of 1885. The landlord's fee of Rs. with process-fee of Rs. is forwarded herewith.

C. D.,

Registering Officer.

APPEX. I.

To

A. B., *Resident of*

TAKE notice that the transfer of the tenure* specified below, of which you are alleged to be the landlord, has been registered, and that the landlord's fee of Rs. is tendered to you herewith.

* Or raiyati-holding at fixed rates.

1	2	3	4	5	6	7	8	9			10
Towji number of estate.	Name of estate.	Description of tenure transferred, with village and pergunnah in which situated.	Annual rent of tenure.	Name, father's name, and residence of transferor of tenure.	Name, father's name, and residence of transferee of tenure.	Nature of transfer.	Date of registration of transfer.	Amount of landlord's fee.			REMARKS.
								Rs.	A.	P.	

C. D.,
Registering Officer.

Ordered that this notice be served on the above-named landlord.

E. F.,
Collector.

Received a copy of the above-mentioned notice and rupees (Rs.), being the amount of landlord's fee specified above.

Stamp, if amount exceeds Rs. 20.

Landlord.

Notice under section 13, Act VIII of 1885.

In the Court of the of

To

THE COLLECTOR OF

LET this notice be served on A. B., resident of , as required by section 13, Act VIII of 1885. The landlord's fee of Rs. with process-fee of Rs. is forwarded herewith.

C. D.,
Judge.

TO

A. B., *Resident of*

TAKE notice that the sale of the tenure* specified below, of which you are alleged to be the landlord, has been confirmed, and that the landlord's fee of Rs. is tendered to you herewith.

* Or raiyati-holding at fixed rates.

1	2	3	4	5	6	7	8			9
Towji number of estate	Name of estate.	Description of tenure transferred, with village and pergunnah in which situated	Number of execution case and names of parties.	Name, father's name, and residence of person whose interest in the tenure has been sold.	Name, father's name, and residence of purchaser of tenure	Date of confirmation of sale.	Amount of landlord's fee			REMARKS.
							Rs.	A.	P	

C. D.,
Judge.

Ordered that this notice be served on the above-named landlord.

E. F.,
Collector.

Received copy of the above-mentioned notice and rupees (Rs.), being the amount of landlord's fee specified above.

Stamp, if amount exceeds Rs 20.

A. B.

APPDX. I.

Notice under section 14, Act VIII of 1885.

In the Court of the of

To

THE COLLECTOR OF

IT is hereby notified to you that the tenure, the particulars of which are entered below, was sold on the date specified below in execution of a decree for arrears of rent due in respect thereof.

* Or raiyati-holding at fixed rates.

1	2	3	4	5	6	7	8	9	10
Towji number of estate.	Name of estate.	Name of landlord of estate.	Address of landlord.	Description of tenure sold, with village or pergunnah in which situated.	Number of execution case and names of parties.	Name, father's name, and residence of person whose tenure has been sold.	Name, father's name, and residence of purchaser of tenure	Date of confirmation of sale.	REMARKS

C. D.,
Judge.

Notice under section 15 of Act VIII of 1885.

To

THE COLLECTOR OF

BE pleased to cause this notice to be served on A. B., resident of The landlord's fee of Rs. , with process-fee of Rs. is deposited herewith for payment to the said A. B.

C. D,
Tenure-holder.

To

A. B., *Resident of*

TAKE notice that I have succeeded to the tenure* specified below, of which you are the landlord. The landlord's fee of Rs. is tendered to you herewith.

Or raiyati-holding at fixed rates.

1	2	3	4	5	6	7	8	9			10
Town number of estate.	Name of estate.	Description of tenure succeeded to, with village and pergunnah in which situated.	Annual rent of tenure	Name, father's name, and residence of late tenure-holder.	Date, if known, of deceased tenure-holder's death	Name, father's name, and residence of successor to tenure	Nature of successor's title to succeed.	Amount of landlord's fee.			REMARKS.
								Rs	A	P	

C. D.,
Resident of

Ordered that this notice be served on the above-named A. B.

E. F.,
Collector.

Received copy of the above-mentioned notice and rupees (Rs.), being the landlord's fee specified above.

Stamp, if amount exceeds Rs. 20.

A. B.

APPDX I

Application under section 80, Act VIII of 1885.

To

THE COLLECTOR OF

The application of , son of , resident of for registration of an improvement under Section 80 *of the Bengal Tenancy Act, VIII of* 1885.

1	2	3	4	5	6	7
Name of pergunnah and estate in which improvement has been effected.	Name of village in which improvement effected.	Nature of applicant's interest in land.	Nature of improvement	By whom executed, and at whose expense.	When executed	Names of tenants benefited, if not more than five in number.

A. B.,
Landlord.

Notice under section 87 of Act VIII of 1885.

To

THE COLLECTOR OF

WHEREAS the holding mentioned below, and hitherto held by C. D., resident of , has been abandoned by him without notice to me and without arranging for the payment of the rent thereof, I hereby notify that I have treated the holding as abandoned and that I am about to re-enter upon it accordingly.

Dated } *Landlord.*

Schedule of Property.

Name of village and pergunnah in which situate	Area and boundaries of holding.	Rent of holding.

Form of Notice under Rule 16, Chapter VI, of these Rules. APPDX. I.

Notice to the proprietors, tenure-holders, landlords, raiyats, and under-raiyats of—

Village
Pergunnah
Thana
District

Take notice that, under the powers vested in me by the Bengal Tenancy Act, VIII of 1885, and the rules made thereunder, I shall, on the day of 188 , at proceed to record the rents of all tenants holding or cultivating lands in the above-named village; I shall also, at the said time and place, or at such other time to which the proceedings may be adjourned, proceed, on the application previously made of either landlord or tenant, to settle fair and equitable rents under section 104, sub-sections 2 and 3 of the said Act. Furthermore, notice is given that, should it then appear that any tenant is holding land in excess of or less than that for which he is paying rent, and should neither the landlord nor tenant apply to have a fair rent settled, I shall, in accordance with the said section of the Tenancy Act, proceed of my own motion to settle a fair and equitable rent for such tenant's holding.

No landlord or tenant shall be entitled to present an application for settlement of fair and equitable rents after the above-mentioned date. All applications should therefore be presented to me before the said date.

You are hereby required to attend before me at the above-mentioned time and place, and at any other time and place to which the proceedings may be adjourned, and to produce such evidence, written or oral, as you may have to offer on the subject-matter of the proceedings.

Revenue-officer.

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SCHEDULE II.

(Referred to in Chapter II, Rule 1.)

PATNA DIVISION.

DISTRICTS.	Local areas.		Marts at which prices shall be recorded.
PATNA ..	Sudder	sub-division	Patna.
	Barh	ditto	Barh
	Behar	ditto	Behar.
	Dinapore	ditto	Dinapore.
GYA ..	Sudder	sub-division	Gya
	Nowadah	ditto	Nowadah.
	Jehanabad	ditto	Jehanabad.
	Arungabad	ditto	Arungabad
SHAHABAD ..	Sudder	sub-division	Arrah.
	Buxar	ditto	Buxar.
	Sasseram	ditto	Sasseram.
	Bhabuah	ditto	Bhabuah.
MOZUFFERPORE ..	Sudder	sub-division	Mozufferpore.
	Seetamurhee	ditto	Seetamurhee.
	Hajeepore	ditto	Hajeepore.
DURBHUNGA ..	Sudder	sub-division	Durbhunga.
	Madhubani	ditto	Madhubani.
	Tajpore	ditto	Tajpore.
CHUMPARUN ..	Sudder	sub-division	Motihari.
	Bettiah	ditto	Bettiah.
SARUN ..	Sudder	sub-division	Chupra.
	Gopalgunge	ditto	Meergunge.
	Sewan	ditto	Sewan.

BHAGULPORE DIVISION.

MONGHYR ..	Sudder	sub-division	Monghyr.
	Beguserai	ditto	Beguserai.
	Jamui	ditto	Jamui.
BHAGULPORE .	Sudder	sub-division	Bhagulpore.
	Banka	ditto	Banka.
	Muddehpura	ditto	Muddehpura.
	Soopole	ditto	Soopole.
PURNEAH ..	Sudder	sub-division	Kusba.
	Arrareah	ditto	Arrareah
	Kishengunge	ditto	Kishengunge.
MALDAH ..	District of Maldah	.. .. ..	English Bazar.

CHITTAGONG DIVISION.

CHITTAGONG ..	Sudder	sub-division	Chittagong
	Cox's Bazar	ditto	Cox's Bazar.
NOAKHOLLY ..	Sudder	sub-division	Kahtara Hât.
	Fenny	ditto	Panchgachia Hât.
TIPPERAH ..	Sudder	sub-division	Commillah.
	Brahmanberiah	ditto	Brahmanberiah.
	Chandpore	ditto	Chandpore

BURDWAN DIVISION.

Districts.	Local areas.	Marts at which prices shall be recorded.
Burdwan	Sudder sub-division	Burdwan
	Raneegunge ditto	Raneegunge.
	Cutwa ditto	Cutwa.
	Culna ditto	Culna
Midnapore	Sudder sub-division	Midnapore
	Ghattal ditto	Ghattal
	Tumlook ditto	Tumlook.
	Contai ditto	Coutai
Beerbhoom	Sudder sub-division	Sudder
	Rampore Hât ditto	Rampore Hât.
Hooghly	Sudder sub-division	Hooghly.
	Serampore ditto	Bhuddessur
	Jehanabad ditto	Jehanabad
	Howrah ditto	Mariju
	Uluberiah ditto	Uluberiah.
Bankoora	Sudder sub-division	Bankoora.
	Bishenpore ditto	Bishenpore

RAJSHAHYE DIVISION.

Rajshahye	Sudder sub-division	Beauleah.
	Nowgong ditto	Nowgong.
	Nattore ditto	Nattore.
Pubna	Sudder sub-division	Pubna
	Serajgunge ditto	Serajgunge.
Rungpore	Sudder sub-division	Rungpore.
	Nelphamari ditto	Nilphamari.
	Kurigaon ditto	Kurigaon.
	Gyabanda ditto	Gyabanda.
Dinagepore	Dinagepore Munsiffi	Railway Bazar Hât.
	Thakoorgaon ditto	Lahiry Hât
	Raigunge ditto	Raigunge Hât.
	Phulbaria ditto	Berhampore Hât
Bogra	District of Bogra	Bogra.

DACCA DIVISION.

Dacca	Sudder sub-division	Dacca
	Naraingunge ditto	Muddergunge
	Manickgunge ditto	Manickgunge
	Moonshigunge ditto	Meerkadim, Munshirhat.
Furreedpore	Sudder sub-division	Furreedpore.
	Goalundo ditto	Goalundo
	Madaripore ditto	Madaripore.
Mymensing	Sudder sub-division	Nasirabad
	Tangail ditto	Kagmari
	Jamalpore ditto	Jamalpore.
	Kishoregunge ditto	Kishoregunge.
	Netrokona ditto	Netrokona.
Backergunge	Sudder sub-division	Burrisal.
	Patuakhally ditto	Patuakhally.
	Perozepore ditto	Perozepore.
	Dakhin Shabazpore ditto	Bhola.

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PRESIDENCY DIVISION.

Districts	Local areas.		Market at which prices shall be recorded.
MOORSHEDABAD ..	Sudder	sub-division	Berhampore.
	Lalbagh	ditto	Lalbagh.
	Kandi	ditto	Kandi
	Jungypore	ditto	Jungypore.
NUDDEA ..	Sudder	sub-division	Goaree.
	Ranaghat	ditto	Ranaghat.
	Meherpore	ditto	Kalabazar
	Chooadanga	ditto	Chooadanga
	Kooshtea	ditto	Bahadurkhali.
JESSORE ..	Sudder	sub-division	Jessore.
	Narail	ditto	Narail
	Magoora	ditto	Magoora.
	Jhenidah	ditto	Sulkupalu
	Bongong	ditto	Bongong
24-PERGUNNAHS ..	Sudder	sub-division	Chetla Hât.
	Baraset, Dum-Dum and Barrackpore	sub-divisions	Baraset
	Diamond Harbour	sub-division	Mogra Hât.
	Buseerhât	ditto	Baduria Baraon
KHOOLNA ..	Sudder	sub-division	Khoolna
	Satkhira	ditto	Satkhira.
	Bagirhât	ditto	Bagirhât

Appendix II.

HIGH COURT RULES.

Rules under Section 100.

1. Every manager appointed under Chapter IX of the Bengal Tenancy Act shall, in all matters, act in accordance with such orders as may, from time to time, be issued by the District Judge.

2. The manager shall pay the Government revenue, rent and other demands of the like nature, as also all just liabilities for the estate, in due and proper time.

3. No manager shall have power to sell or mortgage any property, nor shall he grant or renew a lease for any period exceeding three years, without the express sanction of the District Judge: Provided that this rule shall not render valid any lease for a shorter time than three years, if such lease is disapproved of by the District Judge, or if the District Judge directs that his sanction is to be obtained as regards all leases granted by the manager.

4. The manager shall apply for the sanction of the District Judge to any act which may involve extraordinary expense.

BENGAL SECRETARIAT LIBRARY.

Rules under Chapter XII.

5. All applications to distrain shall be presented and heard in open Court. The examination mentioned in section 123, sub-sec. (2), shall be on oath or affirmation.

6. All such applications and all notices of distraint under section 141 shall be entered in a register to be called the "Distraint Register," which shall be kept in the form annexed. A copy of every such application, to be furnished by the applicant, shall be given to the officer appointed to make the distraint, and a copy of the notice under section 141, to be similarly furnished by the applicant, shall be given to the officer placed in charge of the distrained property.

Form of Distraint Register prescribed by Rule 6.

Serial No. of		Date of application to distrain, or of notice of distraint under section 141.	Name and address of the applicant under section 121, or of the person giving notice under section 141.	Name and address of the defaulter.	Amount of arrear claimed and period in respect of which it is claimed.	Purport of the order passed and date on which it is passed.	Name of the officer deputed to distrain, or to take charge of property distrained.	Date of distraint.	Date of sale proclamation.	Date of sale.	Amount realized by sale.				Amount (if any) deposited under section 136.		Remarks.
Application under section 121.	Notice under section 141.										Arrear.	Costs.	Surplus.	Total.	Arrear.	Costs.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18

7. The officer deputed to make a distraint under section 124, or to take charge of produce distrained under section 141, must, in all cases, be able to read and write the language of the district.

8. The written demand under section 125 shall be framed in accordance with the entries contained in the application or notice referred to in Rule 2.

9. The notification of distraint directed in section 124, Act VIII, 1885, shall be published—

By fixing up in a conspicuous part of the holding, or other place in which the produce is, a notice that such produce has been distrained, and by proclaiming at the same time the contents of the notice by beat of drum.

10. The notice shall specify the name of the person at whose instance the distraint is made, the name of the defaulter, the name of the person in whose charge the produce has been placed, and the amount of the arrear due, and it shall direct any person intending to reap, gather, or store the crop or produce, if unreaped or ungathered, or intending to do any other act necessary for its preservation, to give due notice of his intention to the person who has been placed in charge.

11. The notice shall be fixed up in the presence of not less than two persons, in addition to the agent of the distrainer, who points out the crop or produce.

12. In the event of it being necessary for the distraining officer, or the officer placed in charge of distrained property, to reap, gather, or store any crops or produce, or to do any other acts for the due preservation of the same, as provided by section 126, the person at whose instance the distraint was made shall advance the funds necessary to this end.

13. The officer holding a sale under section 131 shall record a description of the property offered for sale, the names of all persons bidding for the same, and the amount bid by each; and if the sale is postponed, he shall record an order to this effect, and shall then and there notify the place where and the time when the sale will be held.

14. When the sale is concluded and the sale-proceeds are realized, the officer who held the sale shall, after paying the costs of the distraint and sale, as directed in section 134, forthwith pay the balance into Court.

15. The officer holding the sale shall take separate receipts for all sums paid by him as costs of the distraint and sale under section 134, sub-section (1), and if the person giving the receipt is unable to write, the receipt shall be attested by some person able to do so.

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16. When a distraint is withdrawn under section 136, the notification of distraint, published under section 124, shall be taken down.

17. All officers deputed to distrain property under this chapter shall, if there is a post office in the vicinity, report to the Court by letter immediately the distraint is made, or if there is no such post office, shall, immediately on his return, report in writing the nature and extent of the crop or produce distrained, the day on which the distraint was made, the name of the person (if any) placed in charge of the crop, and the day fixed for the sale, or if the sale has taken place, the day on which it took place. He shall also, immediately on his return, file an account of all money received and disbursed by him, together with the receipts for the same and the record of the biddings at the sale, if a sale has taken place.

18. Every person distraining produce by virtue of the authority conferred on him under section 141 of Act VIII, 1885, shall give notice of such distraint to the Civil Court having jurisdiction to entertain an application for the distraint of such produce in a tabular form which shall contain the following particulars :—

(*a*) The name and address of the person at whose instance the distraint was made, and a description of his interest in the property, whether as proprietor, tenure-holder, or raiyat.

(*b*) The name of the defaulter and of the place in which he resides, or was known to be last residing.

(*c*) The amount of the arrear with interest, if any, and the period in respect of which it is claimed.

(*d*) The holding in respect of which the arrear is claimed, the boundaries thereof, or such other particulars as may suffice for its identification.

(*e*) The description and approximate value of the produce distrained, and if the same has been reaped or gathered, the place in which it is stored.

(*f*) The name of the person by whom the distraint was actually made, and the name and address of the person in whose charge the produce has been placed.

(*g*) The date on which the distraint was made.

(*h*) If the crop or produce is standing or ungathered, the time at which it is likely to be cut or gathered.

Appendix III.

A Glossary of Terms used in the authorised translations of the Bengal Tenancy Act, 1885, and rules framed under it.

English.	Hindi.	Bengali.
Abandonment ...	Chhor dena ..	Parityág.
Accounts ...	Hisáb ...	Hisáb.
„ Forms of ...	Hisáb ke naksh ...	Hisaber pat.
„ Statement of	Hisáb ki tafsil ...	Hisáber bibaran patra.
Acquittance ...	Safái yá fárighkhat. ...	Fárkhati.
„ Valid ...	Puri safái yá fárighkhati	Upajukta fárkhati.
Area ...	Rakba ...	Bhumir parimán.
„ Alteration of ...	Rakba ká badalna ...	Bhumir parimán paribartan.
„ Local ...	Sarzamin ká rakba ..	Sthaniya bhumir parimán.
Assessment of revenue...	Sarkári málguzari ká bandobast.	Rájasver bandobast.
Boundaries ...	Chauhaddi ..	Símáná.
Cause ...	Wajeh ...	Káran.
„ Reasonable ...	Wajeh munásib ..	Jukti siddha káran.
Clause ...	Cláz ...	Prakaran.
Contract ...	Kaul karár ...	Chukti.
Counterparts ..	Part-i-sani ...	Múri.
Custom ...	Rewaj ...	Desáchár.
Damages ...	Harja ...	Kshati.
„ Award ...	Harja dilana ...	Kshati puran.
Demand ..	Talbi ...	Dávipatra.
Deposit ...	Amánat rakhna ...	Amánat.
„ Receipt of ...	Amánat rakhe rupyá ki rasid.	Amánat páwan.
„ Refund of ...	Amánat rakhe rupyá ka wapas dena.	Amánati táká phirayá dewa.
Distraint ...	Kurki ...	Krok.
„ Wrongful ...	Be-aini kurki ...	Anyáya kroka.
Ejectment ..	Bedakhli ...	Uchchhed karana.
„ Restriction on	Bedakhli ki kaid ..	Uchchheda karibar niyam.
Enhancement ...	Barháná ...	Briddhi.
„ Conditions of	Barháne ki sharten ..	Briddhir niyam.
„ Gradual ...	Rafte rafte barháná ..	Kramasah briddhi.
„ Progressive ...	Rafte rafte barháná ..	Krame krame briddhi.
„ Restriction on	Barháne ki kaid ...	Briddhi bishaye niyam.
Execution of decree ...	Ijrái digree ...	Decree jari.
Explanation ...	Tashrih ...	Artha karana.
Fallow ...	Parti ...	Patit.
„ new ...	Parti jadid ...	Nutan patit.

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English.	Hindi.	Bengali.
Fallow, old	Parti kadim ...	Puratan pátit.
„ for part of the year	Chaumas ..	
Farm ...	Thika ...	Ijara.
Forfeiture ...	Zabti ...	Sampatti danda.
„ Relief against	Zabti ka iláj ...	Sampatti dander pratikár.
Full discharge ..	Fárighkhati ...	Fárkhati
Holding ...	Jôt ...	Jôt.
„ Abstract of particulars of.	Khatian ...	Khatian.
„ at fixed rates ...	Sharah mukarrar par rakhi hui jôt.	Mukarrari hári bhumi bhog
„ Conditions of ...	Jôt rakhne ki sharten ...	Jotbhoger niyam.
„ Occupancy ...	Hak dakhal ki jôt ...	Dakhali svatva prápta jôt.
Homesteads .	Basgit zamin ...	Bastu bhumi.
Improvement ...	Zamin ki liakat barháná	Utkarsha sadhana.
„ Compensation for.	Liákat barháni ki hye talafi.	Utkarsha sádhana nimitta kshati púran.
„ Registration of.	Liákat barháni ki registri	Utkarsha sádhana registari karana.
„ Right to make.	Zamin ki liákat barháw ká hak.	Utkarsha sádhana karibar svatva.
Illegal cesses ..	Be áini abwáb* ...	Áin biruddha abwáb
„ „ Exaction of	Khilaf áin abwáb ká lena	Áin biruddha abwáb anyáya kariya lewa.
„ interferences ...	Áin ke khiláf dastandázi	Be áinimat hastakshep karan.
Incumbrance ...	Dain ...	Dáya.
„ Avoidance of	Dain rad karna ..	Dáya asiddha karna.
„ Instrument creating.	Dain paidá karne wáli dastavez.	Dáya sristikári nidarsan patra.
Interest ...	Hak ...	Svártha.
„ Protected ..	Bacháe hue hak ...	Sanrakshita svártha.
Land ...	Zamin .	Bhúmi ba jami.
„ Acquisition of ...	Zamin hasil karna ...	Bhúmi grahan.
„ Dearah ...	Dearah zamin ...	Diarah bhúmi.
„ Khamar† ...	Khamar zamin ..	Khamar bhúmi.
„ Determination of private.	Nij dakhli zamin ki tajviz	Nij jami nirnaya karan.
„ Proprietor's private	Malik ki nij dakhli zamin	Bhúsvámir nij jami.
„ Waste ..	Parti zamin or uftada zamin.	Patit bhúmi.
Landlord ..	Zamindar ...	Bhúmyákdhikári.
„ Inferior ...	Zamindar-i-matahat ...	Adhastana bhúmyádhikári
„ Superior ...	Zamindar-i-mafauk ...	Uchchatana bhúmyádhikári.
Lease ...	Patta ..	Páttá

* Abwab, plural of bab, a gate, door, or way—now cesses imposed subsequently to the fixing of the assul standard of assessment. The word indicates the means by which alone it was thought a door was opened to increase the assul.

† Literally a threshing floor; lands for which money-rent was not paid, but the produce was divided on the threshing floor—contradistinguished from raiyati land.

English.	Hindi.	Bengali.
Lease, Expiration of ...	Patta ki miyad khatam hona.	Páttár miyáda atita.
Lessor .	Patta dena wala ...	Pattadátá
Limitation ..	Tamadi ...	Miyada bá tamádi.
Manager ...	Manager .	Karjyadhyaksha.
„ Common ...	Manager ijmali .	Sádháran karjyádhyaksha.
Measurement ...	Paimaish ...	Bhúmi máp.
„ Standard of	Paimaish ka paimanah...	Máper niyam
Mortgagee ...	Rihn rakhne wala ...	Bandhakagrahitá.
Occupation ..	Dakhal ...	Dakhal.
„ Admitted to...	Zamin par dakhal paya...	Dakhalprápta.
Owner ..	Malik ...	Malik.
Payment ...	Ada karna ...	Táká dewa.
„ Appropriation of	Ada kiyi-hui malguzari ko hisáb men láná.	Táká je rupe jama dite hoibe.
„ of rent ...	Malguzari ada karna ...	Khajaná dewa.
Presumption ...	Kiyas ...	Anumán.
Produce ...	Paidawar ya jins ..	Fasal.
„ Appraisement of	Paidawar ki kankut ...	Fasal jáchái.
„ Division of ...	Batai ...	Fasal bibhága.
Proprietor ...	Malik ...	Bhusvámi.
„ Registered ...	Registree kiye hue malik	Registari kará bhumyadhikári vá bhusvami.
Provisions ...	Kaide ..	Bidhán.
„ Miscellaneous	Mutfarrik kaide ..	Bibidh bidhán.
Raiyat ..	Raiyat ...	Ráiyat.
„ holding at fixed rate.	Sharah mukarrar par zamin rakhne wala raiyat.	Mukarrari háre je ráiyatera bhúmi bhóg kare.
„ Inferior ...	Raiyat-matahat .	Adhastana ráiyat.
„ Non-occupancy...	Ghair dakhalkar raiyat...	Dakhali svatva súnya ráiyat.
„ Occupancy ...	Dakhalkar raiyat ...	Dakhali svatva bisishta raiyat.
„ Resident cultivator.	Dehi Kashtkar ...	Khudkast.
„ Non-resident cultivator	Pahi Kashtkar ...	Paikast.
„ Head raiyat ..	Jetu raiyat ...	Mandel
„ Settled ...	Kaimi raiyat ...	Sthitibán ráiyat.
„ Under ...	* Shikmi ya kolaiti raiyat	Korfa raiyat.
Rate ...	Sharah mukh ..	Har.
„ Prevailing ...	Sharah mamuli ya marujwaj.	Prachalita hár.
Receipts ..	Rasid ...	Dákhilá.
„ Effect of ..	Rasid ka asar .	Dákhilar phal.
„ Forms of ...	Rasid ka namuna ya naksha.	Dákhilár pat.
„ Withholding ..	Rasid na dena ...	Dákhilá ná dewa.

* Shikmi: this word is, in Gaya, applied to land the rent or rate of rent of which has not been altered since the Permanent Settlement, though a cess may have been charged for growth of a special crop, such as opium, the cess being only charged when the special crop is grown.

APPDX. III.

English.	Hindi.	Bengali.
Record ...	Ruedad ...	Likhan.
„ Entries in ...	Ruedad ki madain ...	Likhanér lekhá.
„ of-rights ...	Ruedad hakuk ...	Svatver likhan.
Record-of-rights, Publication of.	Hakuk ke ruedad ka mushtahir karna.	Likhan prakásh karan.
Register ...	Register ...	Register.
„ of suits ...	Mukaddama ki register	Mukaddamar register.
„ Field ...	Khasra ...	Khasra or chitha.
Rent ...	Malguzari ...	Khájaná.
„ Alteration of ...	Malguzari ka badalná ...	Khájaná paribartan.
„ Arrears of ...	Baki malguzari ...	Báki khájaná.
„ Bar to recovery of	Malguzari ki wasuli ki kaid.	Khájaná ádáy karite ná para.
„ Commutation of ...	Bhaoli ki jagah nagdi kaim karna.	Khájaná nagdán karana.
„ Deposit of ..	Malguzari amánat rakhna	Khájaná amánat.
„ Enhancement of ...	Malguzari ka barhaná ...	Khájaná briddhi.
„ Fair and equitable	Wajib aur munasib malguzari.	Upajukta o nyájya khájaná.
„ free ...	Lakhiraj ..	Lakhiraj.
„ Fixity of ...	Malguzari ka mukarrar hona.	Khájaná mukarrar thaka.
„ Initial ...	Shuru ki malguzari ...	Prathamá sthaliya khájaná.
„ Instalments of ...	Malguzari ki kist ..	Khájanár kisti.
„ Limit of ...	Malguzari ki had ...	
„ payable in kind ...	* Bhaoli malguzari ...	Sasya rupe deya khájaná.
„ Produce ..	Malguzari jins men ...	Fasli ba bháoli khájaná.
„ Reduction of ...	Malguzari ka ghatáná ...	Khájaná kamána.
„ Settlement of ...	Malguzari ka bandobast karna.	Khájanár bandobast.
Revenue ...	Malguzari ..	Rájasva.
„ free ...	Lakhiraj ...	Lakhiraj.
„ officer ...	Afsar mál ...	Rájasva karmáchárí.
Rights ..	Hak ...	Svatva.
„ and liabilities ...	Hakuk-o-jawabdihi ...	Svatva o dáya.
„ Devolution of occupancy.	Hak dakhal ka dusre ko pahuncha.	Mrityú hoile dákhali svatva bartána.
„ Forest ...	Bankar ...	Bankar svatva.
„ of fishery ...	Jalkar ...	Jalkar.
„ Incident of occupancy.	Hak dakhal ke mukalliq batain.	Dakhali svatver anushanga.
„ Occupancy ...	Hak dakhal ...	Dákhali svatva.
„ of pasturage ...	Charagah ka hak ...	Gocháran svatva.
„ Record-of ...	Ruedad hakuk ...	Svatver likhan.
Rules and presumptions	Kaide o kiyás ...	Vidhi o anumána.
Rules under Act ...	Act ke mutalik kaede ...	Ei áin matá vidhi.
Sale ...	Bikri ya nilam ...	Bikray va nilam.
„ Liability to ...	Bikri ke laik hona ..	Nilámá jogyatá.
„ proclamation ...	Nilami ishtihar ...	Nilamer ghoshaná patra.
„ To set aside ...	Nilam rad karna ...	Nilam anyathá karana.
Settlement ...	Bandobast ...	Bandobast.
„ Permanent ..	Davami bandobast ..	Chirasthayi bandobast.

* Said to be corruption of bahuliya, abundance.

English.	Hindi.	Bengali.
Staple food-crops ...	Khane ki jins ki ám fasleu.	Pradhán utpádya kháda sasya.
Subletting ...	Shikmi patta dena ...	Korfábili karana.
Succession ...	Kaim makam hona ya warsa pana	Uttarádhikára.
Surrender ...	Istifá dena ...	Istafá.
Survey ...	Paimaish ...	Jarípa.
„ *Cadastral* ...	Kistwar paimaish ...	Kshetrabant jarip.
Temporarily-settled districts.	Miadi bandobasti zile ...	Je jiláy kiyat kálín bandobasta tháke.
Tenancy ...	Jôt ya zamin rakhna ...	Prajá svatva.
„ Incidents of ...	Zamin rakhne ki nisbat baten.	Prajá svatver anushanga.
„ Sub-division of	Jôt ki taksim ...	Prajá svatver bibhág.
Tenants ...	Asami ...	Prajá.
„ Classes of ...	Asami ki kismen ...	Prajáder sreni.
„ Inferior ...	Asami matahat ...	Adhastana prajá.
„ Under ...	Shikmi asami ...	Petáo prajá.
Tenure ...	Darmiani hak ...	Madhya svatva.
„ holder ...	Darmiani hakdar ...	Madhya svatvadhikárí.
„ Incidents of ...	Darmini hak ke mutalik baten.	Madhya svatver anushanga.
„ Permanent ..	Davami hak darmiani ...	Káemi madhya svatva.
„ Sale of ..	Hak darmiani ka nilám	Madhya svatver nilámа.
„ Service ...	Chakran zamin ...	Chákrán taluka.
„ Transfer of ...	Hak darmiani ka intikal	Madhya svatver hastántara.
„ Transmission of	Hak darmiani ka intikal	Madhya svatver uttarádhikára.
Use of land ..	Zamin ka istimál ...	Bhúmi byabahár.
Utbandi ..	Utbandi ...	Uthbandi.
To violate conditions ...	Sharton ka torna ...	Niyam langhan karan.

Some Terms used in Zemindari Accounts.

English.	Hindi.	Bengali.
Field register ..	Khasra ...	Khasra or chitha.
Abstract of particulars of holding.	Khatian ...	Khatian.
Record of interests of proprietors.	Khewat ...	Khebat.
Record of the annual rent demand or rent-roll.	Jamabandi or hastabood*	Jamabandi.
Record of daily receipts from tenants.	Siyaha ...	Seha.
Abstract of síaha and jammabandi.	Arsattá ...	Thoka.

* Hastabood, literally hast-o-búd, what "is and was," used in Behar for jamabandi also general inquiry into value of land before harvest.

APPDX. III.

English.	Hindi.	Bengali.
Record showing demand, realization, and balance.	Jamâ wasilbaki ...	Bakijai.
Abstract of receipt and disbursements.	Jumma kharach ..	Jammakharach.
Record showing the name of each tenant, the total area of holdings and rates of rent	Terij assimwar ..	Dagbili khatian.
Abstract of village area and accounts.	Goshwarah ...	
Village expenses ...	Dih kharcha ..	Dihi kharcha.
Miscellaneous receipts, such as fisheries, &c.*	Sair ...	Sair.
Proprietor's private land	Zerait, sir, or kamat† .	Sir, khamár or nij-jote.
	Free Grants.	
Rent-free grants ...	Brit or jaigir‡ ..	Jaigir.
" for the worship of Brahma.	Brahmottar ..	Brahmottar.
" for the worship of Bishnu.	Bishunprit ..	Bishunprit.
" for the worship of Siva.	Sivattar ...	Sibottor.
" dedicated to Pirs.	Pirottar ..	Pirottar.
" for ghatwals...	Ghatwali ..	Ghatwali
" made to village watchmen.	Goraiti jaigir ..	Chowkidari chákrán.
" made to the family of a man killed in the Rajah's service.	Marwat ..	(*Nil.*)
Grants of land at reduced rent.	Menhai or mááfi ..	Ayema §
Assigned by a Rajah for maintenance to a younger son or brother.	Khorish ..	"
Royal grants in perpetuity.	Altamgah ...	Altamgah.

* Literally what moves.

† Zerait, cultivation used for land cultivated under indigo by thikadars in Behar, and thus often confounded with *nij* land.

‡ Birt, corruption of vritti, a small plot of land for a house generally with some ground round it, often given to Brahmans.

§ Literally learned men, originally a grant to religious Mahomedans.

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